The Central Law Journal.

ST. LOUIS, APRIL 9, 1886.

CURRENT EVENTS.

THE LITTLETON LAW LIBRARY—This novel institution of which Hon. John M. Glover, one of the members of Congress from the city of St. Louis, is the originator and manager, will, no doubt, prove to be a long step towards lightening the labors of the legal profession.

It is an application of the genius of common sense to the tangled wilderness of precedents which make up the law, by arranging them under several hundred thousand headings, with proper subdivisions, The practitioner states his point in writing and receives in reply, cases which decide the point. Judges depend more and more upon exact precedents, and the chief drudgery of the legal profession consists in the harassing search for them. The practitioner who could meet every formidable point with one or more decisions precisely in point may through this agency obtain them at the expense of a merely nominal charge, and has it in his power to to halve his labor and double his emoluments. Strong as this statement may appear we believe the system adopted by Mr. Glover will give a close approximation to that result.

The Littleton Law Library has already received the indorsement of Hon. John F. Dillon, late judge of the 8th Federal Circuit, the Chief Justice of the Supreme Court of Missouri, and numerous other distinguished lawyers.

Mr. Glover is a lawyer of recognized ability and for many years has been connected with much of the important litigation pending in the courts of St. Louis. Such for instance as the St. Louis Mutual Insurance cases, and the struggle between Jay Gould and Marie Otis, Cutting, and Pearing, the committee of stockholders for the possession of the old Missouri Pacific railroad in which Mr. Glover represented the committee of stockholders.

RAILROAD COMPANIES AND EXPRESS COMPANIES.—We publish in the present number, a very important decision of the Supreme Court of the United States, fixing the relations between these two important classes of business corporations. The case seems to be of the first impression so far as concerns the alleged rights of express companies. The complainants wholly failed to establish any usage by which the peculiar privileges which they claimed, and which seem to be essential to the due prosecution of their business had ever been accorded to them, or any other similar company, otherwise than by express contract.

It is a little remarkable in view of the enormous and diversified business transacted by express companies, that the questions involved in this case have never before been adjudicated. Since the interchange of commodities became so universal, the law of carriers has been extended and systematized so as to fit almost every conceivable combination of circumstances, but until now the relation by common law, or usage having the force of law, between the carrier who wished to be carried with his goods, and another carrier who is expected to carry the carrier and his goods have never been settled. The court decided that one carrier is not bound to carry another carrier and his goods, upon any other terms than those upon which he carries other passengers and other goods. The controversy in these cases was wholly between the two carriers, the question remains whether at common law or by usage, the general public has a right to demand of railroad companies, the convenience of express facilities if those companies from interest or perversity should decline to furnish such facilities. It will be observed that the court *ex industria* skirts that question. The opinion of Mr. Chief Justice Waite is very able and the whole report is well worthy of careful perusal.

INTER-STATE MARRIAGE LAWS.—We recently called the attention of our readers to a work on the French law of marriages.[1] Since then we have read with much interest, in the *London Law Times*, a notice of a rather complicated marriage case, which has re-

[1] 22 Cent. Law Jour., No. 13 p. 311.

cently come before the English courts. A Indian Nawab, being a Mahommedan, and under the sanction of his religion, and the laws of his country, the husband of two or more wives, came to England, and, while sojourning there, married, according to the Mahommedan ritual, an Englishwoman, by whom he had four children. In 1884 he died, having previously acknowledged the legitimacy of the children, and made a suitable provision for their support. In his will he made a further provision for the children, and appointed guardians for them, the children having in his lifetime been sent to India, where the two daughters were placed in his harem, and the two sons, under the care of certain trustees, received an English education. The mother, who had not assented to this arrangement, applied to the proper court, insisting that the marriage was a nullity, that the children were illegitimate, that the Nawab had no right by his will, or otherwise, to control the destinies of her children, and that she, as their mother, was entitled to be their guardian.

The case is a very interesting one to the profession in England, the relations between that country and its great Asiatic dependancy, being so close and intimate. In this country, it tends only to accentuate the acknowledged expediency, not to say necessity, of a national marriage law by which the diverse systems of the several States may be assimilated and rendered uniform. By our repudiation of the polygamous marriages of the Mormons, we are spared the consideration of cases similar to that of the Anglo-Indian marriage to which we have referred, but there remains in the statute laws of the several States sufficient diversity of rules regulating monogamous marriages, and especially divorces, as to justify an insistent demand for national legislation. The States are, on these subjects, *quasi* independent sovereignties, and it may be that a constitutional amendment must needs precede any radical and exhaustive legislation on the subject. We pretermit the consideration of that question, but whether such an amendment be a necessary condition precedent or not, the expediency of uniformity in the laws controlling a subject so vitally affecting the happiness of so many people, is clear and indisputable.

NOTES OF RECENT DECISIONS.

WILL—TESTAMENTARY CAPACITY—CONTEST OF WILL—WHAT ALLEGATIONS ARE NECESSARY—OPINION EVIDENCE OF THOSE NOT EXPERTS.—The subject of insanity, general or special, is in no class of cases more thoroughly discussed than in what are familiarly known as "will cases," in which the testamentary capacity of the (alleged) testator forms the *gravamen* of the controversy. A recent case in Illinois,[1] in which the limitations to testamentary capacity are fully considered has attracted our attention. It is the old story of religious monomania. An aged man possessed of a handsome estate makes his will, by which, fter a very inadequate provision for his widow and his only child, he bequeaths the bulk of his estate to a well known religious corporation. The widow promptly renounced the provisions of the will, and the daughter contested its validity, alleging that when he executed it, he was of unsound mind by reason of his advanced age, and his highly excited feelings on religious subjects. There was according to the practice of the States, an issue made up by the court, whether the instrument in question was or was not the will of the deceased. The verdict of a jury was adverse to the validity of the will, and the case went up to the Supreme Court on writ of error, and in that court the judgment was affirmed.

The leading question in this case was, of course, whether at the time of making the will in question the testator was of sound and disposing mind, and the court seems very correctly to have arrived at the conclusion, that the jury was fully warranted in finding that he was not; and further that he was laboring under that form of mental disease usually denominated monomania or partial insanity. He was dominated by an intense religious sentiment that dwarfed and crushed out all natural affections. That mental disease of this character, often manifested in an irrational aversion to near relatives and intimate friends, unfits the patient for making a valid testamentary disposition of his estate, is matter of familiar law.[2]

[1] American Bible Society v. Price, N. E. Rep., March 26, 1886; p. 126.

[2] 1 Jarman on Wills, 72, 75 *et seq*—; White v. Wilson,

It may be remarked in this connection that courts as well as juries are especially influenced in forming their conclusions by the question whether the will in judgment is officious or otherwise. If a dotard, infirm of body, and almost or quite imbecile in mind, makes such a will as he ought to make, it will be very remarkable if a court or a jury cannot find in the testimony sufficient evidence of testamentary capacity to establish his will. If however, the decedent evolves such a testament, as shocks the conscience and sense of justice of all mankind, it is judged by a much harsher rule, and the term of the will itself is cumulative evidence of the incapacity of the alleged testator. And this is logical as well as natural, and in accordance with the analogies of the law. An unsustained plea of justification in slander and libel, is regarded as a repetition of the original outrage and authorizes more exemplary damages. So in the case under consideration the monomaniac testator, who declared in his lifetime that he would so place his money, that it would, "roll up, and roll up, and roll up until the day of judgment, to work for old Isaac Foreman" and then in defiance of all moral duty and natural feeling, makes a will in accordance with these ideas; such a will should be regarded as completing the proof of his delusion that salvation can be bought with money.

There is another matter of interest treated in the case under consideration, that is the competency of non-expert witnesses to express opinions, as to the sanity or insanity of the testator. The rule is well settled that such witnesses may testify on this point, provided they first state the observations upon which their opinions are founded.[3]

As to the value to be attached to the opinions of non-expert witnesses founded upon facts and circumstances occuring under their own personal observation which forms the only foundation upon which they can testify at all in that connection.[4]

The court very judiciously observes: "A number of such witnesses were examined on each side, but there is this difference in favor of the contestant: most of the neighbors of the testator—those who had known him longest and most intimately—testified that they believed him to have been insane at the time the will was executed. With but a few exceptions, those who testified that they believed the testator to have been sane at the time he executed the will, were persons seeing him but occasionally, and having but casual business transactions with him. We concede that the observations of the witnesses, stated as the basis of their belief, that the testator was insane, are in very many instances inconclusive and unsatisfactory, and in one or more instances the witnesses simply say that he acted "funny" or "queer," or "strange," without the ability to recall, or, at all events, to describe, the acts thus characterized. Much reliance, of course, cannot be, and we assume was not, at the trial, placed on this evidence. Still there is this to be borne in mind: The conclusions drawn from observation by illiterate persons, unaccustomed to describe what they see, when relating to a matter of which they are competent to judge, is usually more accurate than their description of that, from which their conclusions are drawn. After all, persons see and know certain persons, animals, or things to be different from each other, without pausing to note and fix in the memory the entire extent of the difference, and so arrange it in their mind that they can describe it to others with such accuracy as to make them see it with the same distinctness as they did themselves. With illiterate or untrained minds, this inability is made greater by a want of, or an incapacity to accurately use the appropriate words; and the novelty of the position of a witness not infrequently embarrasses persons in recalling and in using descriptive language with that readiness and accuracy they would under different circumstances. Experts gave their opinions on both sides: one that the testator was sane, and the other that he was insane. The family physician of the testator, without professing to be an expert, added his opinion to those of the neighbors who believed that the testator was insane; limiting it to matters of religion and matters in which the testator's loves and hates were involved."

(citing Greenwood's case) 13 Ves. 89; Dew v. Clark, 3 Add. 79; S. C. 5 Russell 163; Boughton v. Knight, L. R. 3 P. & D. 64; Edge v. Edge, 38 N. J. Eq. 211; Re Cole's Will, 49 Wis. 179.

[3] Roe v. Taylor, 45 Ill. 485; Upstour v. People, 109 Ill. 175; Hardy v. Merrill, 56 N. H. 227; Rutherford v. Morris, 77 Ill. 397; Carpenter v. Calvert, 83 Ill. 63.

[4] Appleby v. Brock, 76 Mo. 314; *Re* Ross. 87 N. Y. 514.

MUNICIPAL CORPORATION—LIABILITY OF FOR NEGLIGENCE—RULE OF DAMAGES IN SUCH CASES.—The liability of municipal corporations for damages resulting from the construction and improvement of streets and other public grounds, has been the subject of much litigation. A recent case decided by the Supreme Court of Indiana,[5] throws further light upon the subject. The action was brought to recover damages for injury to the lots of the plaintiffs, by reason of a street improvement made by the defendant, which threw upon her lots a large quantity of water. She had already sued for and recovered damages for this identical injury, and the action under consideration, was for further and later damage resulting from the same cause.

Two questions were therefore presented: first, what is the liability of a municipal corporation for damages to adjacent property, resulting from street improvements; and second, whether after a recovery of damages, for such an injury, a second action can be maintained for further injuries, accruing from the same cause, and taking effect after the period at which the first action was brought.

Upon the first question the court found no difficulty. It held, that although a municipal corporation is not liable for injuries resulting from mere errors of judgment as to the plan of a public improvement, it is liable for such injuries as result from negligence in devising or forming the plan of those improvements, as well as for negligence in the execution of of the plan, whether the latter be objectionable or not.[6] The liability of the corporation is not limited to the mere negligence in the execution of the plan to the mechanic or contractor who performs the work, but includes the negligence of the engineer and the folly of the board itself. The following is the court's strong illustration of its meaning:

"Suppose that a common council of a city determine to build a sewer and cover it with reeds, can it be possible that the corporation can escape liability on the ground that the common council erred in devising a plan? Or, suppose the common council undertake to conduct a large volume of water through a culvert capable of carrying less than one-tenth of the water conducted to it by the drains constructed by the city, can responsibility be evaded on the ground of an error of judgment? Again, to take an illustration from a somewhat different class of cases, suppose the common council to devise a plan for a bridge that will require timbers so light as to give way beneath the tread of a child, can the city escape liability on the ground that there was only an error of judgment in devising the plan?"

Upon the second question the court finds more difficulty; after reciting that the word "injury" denotes an illegal act, and the word "damages" the amount recoverable as amends for the wrong, it proceeds to set forth the distinction to be made between *damnum absque injuria* and the wrong for which redress may be obtained.

"The distinction between injury and damages is an important one in this instance, and for this reason we have been careful to mark the difference and to enforce our statement by reference to authorities, although the principle involved is a rudimentary one. The distinction is important, for the reason that the law is, that fresh damages without fresh injury, will not authorize a second or subsequent action. The rule is thus tersely stated in Warner v. Bacon.[7] 'A fresh action cannot be brought unless there be both a new unlawful act and fresh damage.' The rule is illustrated by many cases. Mr. Mayne refers to the case of Howell v. Young,[8] and commenting on it, says: 'The statute of limitations runs from the act of negligence, not from the time an injury accrues. Such injury is merely a consequential damage, not a fresh cause of action. The damages, then, in the original action must cover all the loss than can ever arise, because no such loss can afterwards be compensated.'[9] An American author says: 'A cause of action and the damages recoverable therefore are an entirety. The party injured must be plaintiff, by the common law, and he must demand all the damages which he has suffered or ever will suffer

[5] City of Vernon v. Voegler, Am. Law Reg. February, 1886.

[6] City of Evansville v. Decker, 84 Ind. 325; Cummins v. City of Seymour, 79 Id. 491; s. c. 41 Amer. Rep. 618; Weis v. City of Madison, 75 Ind. 241; s. c. 39 Amer. Rep. 135; City of Indianapolis v. Tate, 39 Ind. 282; City of Indianopolis v. Lawyer, 38 Id. 348.

[7] 8 Gray 397.

[8] 5 Barn. & C. 259.

[9] Mayne Dam. 611.

from the injury, grievance, or cause of action, upon which his action is founded. He cannot split a cause of action and bring successive suits for parts, because he may not be able to prove at first all the items of the demand, or because all of the damages have not been suffered.'[10] The rule we are discussing applies to cases of personal injuries, for, among the earliest of the reported cases, we find it laid down for law that in an action for trespass to the person, the recovery of damages must be once for all, including past as well as prospective damages.[11] In Hodsoll v. Stallebrass,[12] it was held that both injury and damage must concur to give a cause of action; that the damages were not the sole cause of action; and the jury were directed to assess both present and prospective damages, because a second action could not be brought for damages resulting from the same injury.

Upon this ancient doctrine rest the cases which hold that where personal injuries are received from the negligent act of a carrier of passengers, or are caused by the negligence of a municipal corporation, all the damages, present and prospective, must be assessed in one action, because a second action cannot be brought.'' [13]

From the whole case the court arrives at the conclusion that but one action will lie for an injury caused by a completed work, done under the orders of a municipal corporation, and that prospective damages must be included in the verdict recovered in that action.

[10] 1 Suth. Dam. 175.
[11] Fetter v. Beale, 1 Salk. 11; s. c. 1 Ld. Raym. 339.
[12] 39 E. C. L. 301.
[13] Town of Elkhart v. Ritter, 66 Ill. 136; Weissenberg v. City of Appleton, 26 Wis. 56; Whitney v. Clarendon, 18 Vt. 252; s. c. 46 Am. Dec. 150.

THE RIGHT TO INSPECT PUBLIC RECORDS.

The purpose of this article is to discuss that particular phase of the subject only, which relates to the right of individuals, to examine and take copies of deeds and other recorded documents affecting titles to real estate.

A Question of Statute.—The office of register of deeds is a creation of statute and we must first look to the statute for an interpretation of its object, and the purposes and character of the records it is designed to provide. In some of the States it will be unnecessary to go beyond the statutes, as the right of all persons to inspect such records is laid down in clear and unambiguous terms. Thus in Arizona it is provided that: "All books of record, and all indices in the recorder's office, and all maps, charts, surveys and other papers on file therein, shall, during all office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge, and the recorder shall arrange the books and indices in his office in such suitable places as to facilitate their inspection.'' [1] Similar statutes have been enacted in Alabama,[2] Colorado,[3] Louisiana,[4] Minnesota[5] and New Jersey.[6] While such statutes have no authoritative significance outside of the States in and for which they were enacted, they may at least serve to suggest the intention of the legislatures in those States in which the statutes are silent upon the subject.

Whether Limited or General.—The writer is not aware of any instance in which the right of an individual to inspect the public records relative to his own property, or in respect to any matter in which he was shown to have had a personal interest has been questioned. It has been contended, however, that to entitle one to such inspection, he must have some interest in the subject matter of the records or documents to be inspected.[7] But a somewhat cursory examination of the authorities has failed to disclose any case directly in point, sustaining the proposition.[8] While the right of general inspection has frequently been declared by text writers of high character as well as by the courts.[9] The leading case in this country is

[1] Comp. Laws, 1877, ch. 5 § 19.
[2] Code, 1876, § 2150.
[3] Gen. Stat., 1883, p. 266, § 58.
[4] Voorhees Rev. Stat., 1876, § 3082.
[5] Stat., 1878 p. 151.
[6] Revision, 1877, p. 956.
[7] See People v. Walker, 9 Mich. 328; Rex v. Babb, 3 T. R. 580; Rex v. Lucas, 10 East, 235; Grant Corp. 311.
[8] In People v. Walker, *supra* the records, of which inspection was sought, were those of a Plank Road Company. See the other two cases above cited reviewed in People v. Cornell, *infra*.
[9] People v. Cornell, 47 Barb. 329; Rex v. Shelly, 3

that of the People *ex rel* Henry v. Cornell, just cited, in which it was held that a corporator of a municipal corporation has a right to have a general inspection, and to take copies, of the public documents and records of the corporation, under such rules and restrictions as will preserve them from loss or mutilation, and prevent any serious interruption of the duties of the *custos*; and that the right is not restricted to cases where the corporator has some private interest, for the enforcement and protection of which an inspection of certain documents is necessary. Barnard J. in delivering the opinion of the court said: "It was claimed, and strongly urged, on the argument, that a corporator has a right to inspect such records only where he has some private interest, for the enforcement and protection of which, the inspection of certain documents is necessary; and that even then, the inspection must be limited to those documents. And it was claimed that this rule was established by the English decisions. I have examined the English authorities referred to on the argument, and also such as I have been able to discover in the books, and think that none of them so restrict the right of inspection; while many of these distinctly uphold the right of general inspection." Upon another point in the argument the learned judge remarks: "There is one argument against granting the writ, remaining to be noticed. That argument is, that it would be very inconvenient to allow every citizen that chooses so to do, to come into the office and inspect documents and make copies of them, and it is suggested that, if they be allowed so to do, large accommodations, and a large clerical force would be required. I do not understand that there is any serious difficulty in procuring larger accommodations and more clerical force, if that should be found necessary. But this is a mere anticipated difficulty which I apprehend will not practically occur."

The records in this instance were those in the office of a street commissioner. In the case of deed records, the ground for argument in favor of the right of general inspection would be much stronger. One of the chief objects of such records is to give notice and any restriction upon the right of inspection would be directly in contravention of that object. The books are full of expressions by text writers and judges such as the following: "The records are for public and general inspection and are required to be kept that all persons may have, by means of them, accurate information concerning titles" etc.,[10] and such is unquestionably the intention of the law.

Whether limited as to the Purpose of the Inspection.—It would seem to follow as a necessary correlation, that one having the right of general inspection, may inspect the records for any purpose he may choose; subject of course, to the power of the custodian to prescribe such reasonable and general rules as may be necessary to preserve the records from loss or mutilation. In Commonwealth v. O'Donnell,[11] it was held that the recorder was bound to give exemplifications from the "fair-book" of deeds and mortgages, on request, without regard to the use to be made thereof, on the ground that it was a record of the office. If it be the duty of the recorder to furnish transcripts from the records without regard to the use to be made thereof, no reason is perceived why the same rule should not apply to the right of an individual to inspect and take copies of the records, even though it be for purposes of speculation or gain, as the making of abstracts for hire or reward, or the compilation of indices for his own personal use and convenience.

Remedy in Case of refusal of Custodian to permit Inspection.—Says Mr. Willcock[12] "Every corporator has a right to inspect all the records, books, and other documents of the corporation, upon all proper occasions; and if, upon application[13] for that purpose the officer who has the custody refuses to show them, the court will grant a *mandamus* to enforce his right." Where the corporators application to inspect is founded on his general right, he has a *mandamus*, but when

Term R. 142; Rogers v. Jones, 5 D. & R. 484; Hebert v. Ashburner, 1 Wils. 297; Dillon Mun. Corp. § 303; Glover 262; Willic. 347. See Greenl. Ev. § 471-478; Ang. and Ames. Corp. § 707; Topp. on Mand. 52, 95; Harrison v. Williams, 3 Barn. & C. 162.

[10] Pamphlet on Liability of Public officers etc. by Hon. Thos. M. Cooley.

[11] 12 W. N. C. 291.

[12] Willc. Corp. 347.

[13] Insulting language an excuse for non compliance. Boyden v. Burke, 14 How. 575.

it is founded on a suit pending, he obtains a rule.[14]

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[14] Dillon Mun. Corp. § 303 and cases cited.

INNKEEPERS' SERVANTS.

Though it may seem somewhat harsh to hold that a master should be liable for the criminal acts of his servant, still there are several examples of this liability both at common law and under a variety of statutes. As regards statutes there are many which would be reduced to a nullity if it were not to be taken as an axiom that what the servant does or omits to do will render the master responsible. As regards the common law there are examples, especially in the case of carriers and apparently, also, of innkeepers, who are presumed to warrant the safety of the goods carried and deposited under their care. The liability of innkeepers in this respect, being of great interest at all times, may usefully be considered on the present occasion.

An innkeeper is rather a favorite of the common law, and his status is often quoted and appealed to as somewhat peculiar and anomalous, being one of the few tradesmen who are compelled to sell their goods whether they will or no, if a suitable guest appears in the shape of a traveller. The limits of that doctrine need not be stated at present except only to remark, in passing, that an innkeeper holds so high and meritorious a position that he is liable to an action, and even to an indictment, if he refuses to receive and entertain a traveller who desires such entertainment. Another incident equally important to the traveller's comfort, though often disastrous to the innkeeper, is the liability which he incurs, if the goods of his guest are stolen or lost while under his hospitable roof. Why, and to what extent this liability exists deserves to be known and remembered, and it is best illustrated by some cases which have actually occurred.

The common law lays down with great complacency the elementary rule that an innkeeper is liable for the goods of the guest who lives in his house, and if somebody steals them, so much the worse for the host. So recently as fifty years ago it was not deemed quite clear whether the innkeeper was liable except for the guest's goods, and if the guest had a bagful of money it was said that in that case the same liability did not exist. That point was put to the test in Kent v. Shuckard,[1] where a gentleman and his wife went to an inn in Brighton and took a sitting-room and two bed-rooms, so placed that a person sitting in the dining-room, with the door open, could see the entrances into both bed-rooms. Next day the lady laid her reticule containing her money on the bed in her bed-room, and afterwards returned into the dining-room, but leaving the door open. Five minutes later, on sending her maid to the bed-room, the reticule had disappeared. Nobody could guess whether it had been lost or stolen, but the action was brought, and the point was raised that at best the defendant was only liable for the loss of goods, but not of money. The Queen's Bench made short work of this argument. Lord Tenderden, C. J., said:—"The principle on which the liability of an innkeeper for the loss of the guest is founded is, both by the civil and common law, to compel the innkeeper to take care that no improper person be admitted into his house, and to prevent collusion between him and such person. If a lady were to leave a valuable shawl in her room, the innkeeper, though unacquainted with its value, would clearly be responsible for it if lost; and upon the same principle he must be so in the case of money of the guest."

Since the liability of the landlord of an inn is undoubted, the favorite defenses which he sets up are usually of two kinds: First, that the guest was careless, and himself led to the loss or robbery of the goods; or, secondly, that the evidence leaves the matter so vague that there is nothing to show that the innkeeper's servants had anything to do with stealing or losing the goods, and, therefore, he ought not to suffer. Many cases in recent years illustrate the former of these defenses, namely, that the guest was careless; and one of the usual marks of carelessness is the practice of sleeping without first locking his bedroom door. Cases of this kind generally give rise to great argument, but they turn chiefly on matters of fact, and on the infer-

[1] 2 B. & Ad. 803.

ences likely to be drawn by a jury who listens to the whole story. In a noted case of Oppenheim v. White Lion Company,[2] a guest at a Bristol hotel arrived late at night, and while in the commercial room, before going to bed, he took out his purse to pay a small sum, and noticed that he had £22 in the purse. He directed the chambermaid to leave his bedroom window open, as he always slept with an open window. The window opened on a balcony. The plaintiff went to sleep without locking his bedroom door. In the morning his pocket was found turned inside out, and the money gone. Great argument arose as to whether there was evidence of negligence on the part of the plaintiff, and the court in the end held that the jury were right in treating this as a case of loss by the plaintiff's own negligence. In another case of Spice v. Bacon,[3] where also a guest had gone to sleep without locking his bedroom, and in the morning his money and valuables had been stolen. The chief contention was, as to what was the right direction to give to the jury, and the Court of Appeal, including the Lord Chancellor, said the proper direction was this:—"You have all the circumstances before you, and you can see what steps the plaintiff could have taken to secure his property, and you must consider, if he was not prepared to take any of those steps, whether he ought to have locked his door." Whichever way the jury find, the court will not interfere. In a still later case the point of locking the door was further considered. In Herbert v. Mackrell,[4] the guest and his wife had valuable jewelry lying upon the bedroom table. The guest had gone late at night to his bedroom, and it was doubtful whether he had locked the door. The jury had found that the loss would not have happened if the guest had acted with ordinary care, and that there was no wilful act or default of the innkeeper or his servants. This finding was complained of, but the High Court could not see any fault in it. The matter was for the jury, and they had drawn their inference. These cases seem to show that a person who neglects to lock his bedroom door has a small chance of recovering in an action against the innkeeper, for juries look upon this locking of the door as the proper thing for any reasonably careful man to do.

While it is often difficult for a guest, who has been robbed in his inn, to make out that he himself acted with ordinary care, and, therefore, is entitled to succeed, there are also great difficulties in judges knowing whether the evidence was such as was proper to leave to a jury, that is to say, whether it shows any want of care on the part of the innkeeper and his servants. In a case of Richmond v. Smith,[5] a traveler went to an inn, and desired to have his luggage taken into the commercial room to which he resorted, and from which it had been stolen. An action having been brought, the defendant contended that the plaintiff, by ordering the goods to be taken to the commercial room, took them under his own protection, for the rule of his house was, that the goods of guests were taken to the bedroom, unless orders to the contrary were given. Lord Tenterden, C.J., said that at common law when a traveler brings goods to an inn, the landlord is responsible for them. And if it had been intended by the defendant not to be responsible unless his guests chose to have their goods placed in their bedrooms, or some other place selected by him, he should have said so. And Bayley, J., said that an innkeeper's liability very closely resembles that of a carrier. He is *prima facie* liable for any loss not occasioned by the act of God or the king's enemies, although he may be exonerated where the guest chooses to have his goods under his own care. In that case the jury had found for the plaintiff, and the court refused to alter that finding by granting a new trial.

In another case of Dawson v. Chamney,[6] the plaintiff's servant was attending Penrith fair, and took the plaintiff's horse to the defendant's inn, and gave it in charge to the hostler, who placed it in a stall with another horse. The other horse kicked the plaintiff's horse and caused injury, for which the action was brought. The judge left it to the jury to say, whether there was any negligence on the part of the defendant, and they answered in the negative, because he called witnesses

[2] L. R. 6 C. P. 515.
[3] 36 L. T. N. S. 896.
[4] 45 L. T. N. S. 649.
[5] B. & C. .
[6] 5 Q. B. 164.

to show that all due care had been taken. The court was asked for a new trial on the ground that he ought to have directed a verdict for the plaintiff. The court held that when the nature of the injury left the cause wholly doubtful, it was correct to take the opinion of the jury, whether the evidence established that it was produced by a defect of such care. The judge had thought that there was a presumption of negligence, and called on the defendant for his answer, which was given by proof of such attention and skilful management as to convince the jury that the damage could not have been occasioned by the negligence imputed. That proof took away the ground of action according to all the authorities. A later case, however, of Morgan v. Ravey,[7] goes the full length of holding that, even though the innkeeper is careful, he is liable like a carrier for the goods being stolen or lost.

Though the fact of an innkeeper's servant stealing the guest's goods would not, therefore, be a defence to the innkeeper, even though the innkeeper showed that he had done everything in his power to secure an honest servant, yet it was always deemed somewhat harsh to come to this conclusion, and, moreover, few juries would scruple to hold the innkeeper liable. In such a case there used to be contentions made by all innkeepers somewhat resembling what happens when a carrier, under the Carriers Act, sought to make out that his servants did not steal the goods carried. Such cases are full of difficulty, and the legislature has put innkeepers much on the same footing as carriers by the Innkeepers Liability Act.[8] By that act no innkeeper shall be liable to make good to any guest of such innkeeper any loss or injury to goods or property brought to his inn, not being a horse or carriage or live animal, to a greater amount than the sum of £30, except in the following cases: (1.) Where such goods or property shall have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper, or any servant in his employ; (2) where such goods or property shall have been deposited expressly for safe custody with such innkeeper. There is a proviso that in case of such deposit it shall be lawful for the innkeeper, if he think fit, to require as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. And by another section of the act the innkeeper is bound to receive the guest's goods or property for safe custody, otherwise he cannot take the benefit of this act. And, moreover, if he means to take the benefit of the act, he must cause a copy of the first section of the act to be exhibited in a conspicuous part of the hall or entrance to the inn. As to this last requirement it was held in Spice v. Bacon,[9] that a mere verbal error in the copy of the statute will not vitiate the notice so as to deprive the innkeeper of the benefit of the act.

The passing of this act limiting the liability of innkeepers, therefore, puts an innkeeper in this position, that he will still be liable for any loss of the guest's goods, provided the guest cannot be charged with any carelessness leading to such loss. And at the most he can limit his liability to £30, only upon showing that he has exhibited by a conspicuous notice a copy of the above enactment, and provided he has not objected to take personal charge of the goods when asked. Still there are many difficult questions arising on the conflicting evidence usually given, and on the proper inference to be drawn by a jury, and on the proper direction to be given by judges who try the case. Whether the theft of the goods had taken place by the innkeeper's or carrier's servants, or by some stranger, becomes often important. There are one or two recent cases on the subject which greatly puzzled the courts, and we reserve a full account of these to another occasion, when we may consider the parallel case of carriers and their servants.—*Irish Law Times.*

[7] 6 H. & N. 265.

[8] 26 and 27 Vict., c. 41.

[9] 2 Q. B. D. 463.

JURISDICTION OF EQUITY OVER ESTATES OF NON-RESIDENT DECEDENTS.

VAN GIESON'S EXECUTOR BANTA *

PRIVATE INTERNATIONAL LAW. [*Equity—Jurisdiction.*] *When Equity no Jurisdiction over Estate of Non-Resident Decedent*—The complainant claimed that, as a residuary legatee, he was entitled to a part of a fund in defendants' hands, under what the complainant insisted was a void bequest.—*Held*, that as the testator was at the time of his death a non-resident (he lived in New York, where the will was proved) and his will had never been proved in this State, nor recorded here, as authorized by the statute, the complainant was not entitled to relief, although the bill states that the fund is under the control of the defendants, who reside in this State and are the executors of the surviving executors of the will by which the bequest was made.

Bill for relief. On final hearing on bill, answer and replication.

Mr. C. H. Voorhis, for complainant; *Mr. A. Zabriskie*, for defendants.

THE CHANCELLOR.

The bill is filed by the executor of Margaret Van Gieson, deceased, against the executors of Abraham Westervelt, deceased, for a decree declaring invalid a bequest of $500 in the will of Garret H. Van Wagoner, deceased, and ordering that one-third of the amount, with its accumulations, be paid to him. By the bequest, the testator intended to create a permanent fund, the interest whereof was to be expended in enclosing, keeping in repair and improving, a designated public burying-ground in Bergen county. The complainant insists that the bequest is not a valid charity, and that therefore those who, under the will, are entitled to the residue of that part of the estate from which the bequest was taken, are entitled to the fund and its accumulations. By the will, the testator, after directing sale of his real estate, and making disposition of one-half of the proceeds thereof, gave, out of the other half of the proceeds, certain legacies, and made the bequest before mentioned, and then gave all the rest and residue of that half to three persons, of whom the complainant's testatrix was one. The testator resided in the city of New York at the time of his death. His will was made and proved there. Only one of his executors, Abraham Westervelt proved it. He and the other persons named as executors in it are dead. Mr. Westervelt died in this State where he resided, and his will was proved here by the defendants and the late Abraham O. Zabriskie, his executors. The surviving executors have control of the fund in question. It is enough to say, to dispose of this case, that the complainant has established no title to relief. The will under which he claims, has never been admitted to probate in this State, nor filed and recorded here under the provisions of the orphans court act in reference to the filing and recording of foreign wills. Rev. p. 757. It cannot be received as evidence of any right of the complainant to the fund, or any part thereof, if the bequests which he seeks to attack were declared invalid. Tyler v. Bell, 2 My. & Cr. 89; Bond v. Graham, 1 Hare, 482: Ryves v. Duke of Wellington, 9 Beav. 579; Armstrong v. Lear, 12 Wheat. 169; Brown v. Brown, 4 Edw. Ch. 343; Campbell v. Sheldon, 13 Pick. 8. The validity of the bequest must be decided by the law of the State where the will was made and the testator was domiciled. Story Confl. Laws, § 479, c. The fact that according to the bill a part of the estate is under the control of the surviving executors of the executor of the will, and that they reside in this State, does not, of itself, give jurisdiction. It is claimed by the complainant that the fund in question is part of the residue of the proceeds of the one-half of the testator's real estate, from which it was taken, and that he is, therefore, under the will, entitled to one-third of the fund. He claims, directly under the will, and that, in the administration of the assets under it, he is entitled to the money which he seeks to obtain by this suit. The bill will be dismissed, with costs.

NOTE.—In McNamara v. Dwyer,[1] jurisdiction was sustained over a resident of Louisiana, who was temporarily in New York on his way to Ireland, as the administrator of an intestate who died in Ireland, on the application of the next of kin, residing in New York, the bill alleging that the defendant had been appointed administrator in Ireland, had collected the assets of the estate, brought them to this country and squandered them here.[2]

In Caldwell v. Maxwell,[3] an executrix of a testator, who was domiciled and died in Virginia, removed to Tennessee with the effects of the estate, and was held liable to be called to account in the latter State by the legatees, residents also of Tennessee.

In Gravely v. Gravely,[4] an executrix, resident in England, of a testator who had died there, proved the will both in England and in South Carolina. Whether a *cestui que* trust could maintain a suit against him in South Carolina, for misconduct in regard to the investment of the trust fund in England, was held to depend on whether (supposing the testator to have been domiciled in England) there were assets in South Carolina when the suit was brought.

In Campbell v. Tousey,[5] a non-resident executor was held liable, at law, in New York, as an executor *de son tort*, for assets collected in New York.[6]

In Tunstall v. Pollard,[7] an executor who had taken probate of his testator's will and letters testamentary in England, and collected the assets and brought them into Virginia, but never qualified as executor in Virginia, was held liable to be sued by the legatees, in the

* S. C. 40 N. J. Eq. 14 (advance sheets).

1 7 Paige, 239.

2 See Allsup v. Allsup, 10 Yerg. 282; Dillard v. Harris, 2 Tenn. Ch. 196; but see Mellus v. Thompson, 1 Cliff. 125; Dawes v. Boylston, 9 Mass. 337; Brownlee v. Lockwood, 5 C. E. Gr. 239: Sparks v. White, 7 Hump. 86; Brown v. Brown, 1 Barb. Ch. 189; Alger v. Alger, 31 Hun. 471.

3 2 Tenn. 102.

4 20 S. C. 93.

5 7 Cow. 64.

6 See Vermilya v. Beatty, 6 Barb, 429; Metcalf v. Clark, 41 Barb. 45; Marcy v. Marcy, 32 Conn. 308.

7 11 Leigh 1.

Court of Chancery of Virginia, for an account of his administration and for the unpaid legacies; see Dickieson v. Hoomes,[8] Colbert v. Daniel,[9] Montalvan v. Clover.[10]

In Olney v. Angell,[11] the legatees of a will made in Wisconsin, by a testatrix domiciled there, were held capable of maintaining a suit in Rhode Island, against an administrator of the testatrix, appointed in Rhode Island, for an account of the assets which had come into defendant's hands in Rhode Island, and for the amount of their legacies; see Tourton v. Flower.[12]

In Brown v. Knapp,[13] a testator, domiciled in Connecticut, gave a legacy to his infant grandson living in New York, payable when he should attain twenty-one years of age, and appointed an executor, also living in New York. The executor passed his final account in Connecticut.—*Held*, that the grandson could maintain a suit against the executor in New York, to recover interest on his legacy during his minority (because the testator stood towards him *in loco parentis*), and that the rate of interest fixed by law in Connecticut should govern.

In Price v. Brown,[14] a surviving executor and trustee alleged, in a suit in equity, that his co-executor had received all the funds of the estate, most of which was situated in New York, where their testator was domiciled, and where his will was proved and his executors qualified; that such co-executor had mismanaged and squandered the estate; that plaintiff is a legatee of the estate, as well as executor; that his co-executor was a resident of New Jersey at the time of his death, and that the defendant is his executor, and proved the co-executor's will in New Jersey, and also resides there.—*Held*, that the defendant could be called to account for the acts of his testator (complainant's co-executor), in the courts of New York.

In Davis v. Morris,[15] a citizen of Mississippi, by will, appointed a citizen of Virginia trusteee of a legacy for his daughter and her children. The daughter and her only child, after testator's death, became residents of Virginia.—*Held*, that the child. after her mother's death, could maintain a suit in Virginia against the executors of the trustee, for his alleged breach of trust committed in reference to testator's estate in Mississippi, although it appeared that there was then pending in Mississippi a suit by another legatee against the same defendants, to recover another legacy, and that defendant was also a party thereto.

In Palmer v. Phoenix Ins. Co.,[16] an executor, residing in New York, of a testator domiciled in Connecticut, having proved the will in both States, was held capable of bringing an action in New York against a Connecticut insurance company, on a policy issued by the defendants on his testator's life.

In Moore v. Lewis,[17] the administrator of a legatee filed a bill in Alabama to recover a legacy given to his intestate by a will proved in Cuba, and relief was denied.[18]

In Campbell v. Wallace,[19] a *cestui que trust* claimed under a will duly probated in England, but not in Massachusetts, nor was a copy thereof filed there.—*Held*, that the court had no jurisdiction, although the defendant, the trustee, seems, from the report of the case, to have been a resident of Boston.

In Porter v. Trail,[20] a non-resident testator held a mortgage on lands in New Jersey.—*Held*, that his executors could not, on merely filing an exemplified copy of the will in the county where the mortgaged premises were situated foreclose the mortgage, their capacity being objected to by answer; but see Doolittle v. Lewis,[21] Averill v. Taylor,[22] Hayes v. Frey,[23] Eells v. Holder.[24]

In Sneed v. Ewing,[25] a will proved in Indiana and unrecorded in Kentucky, was held inadmissible as evidence of a devise of lands lying in Kentucky, in a suit in the latter State.[26]

In Paschal v. Acklin,[27] a will was probated in Tennessee, on proof which would authorize its probate in Texas, but a certified copy of the will and of its probate was deemed inadmissible evidence of a devise of lands in Texas.

In Scruggs v. Driver,[28] a testator residing in Tennessee gave to his wife certain bequests in lieu of her dower. She dissented, and, before her dower and distributive share of the estate had been allotted to her, the executors made a contract with her agent to purchase her interest in the estate. At the time the contract was made the widow was dead, but this fact was not known to the executors nor to her agent. On a bill filed by the executors in Alabama against her executor to cancel their contract, on the ground of mistake: *Held*, that a cross-bill to compel the plaintiffs to account for her share of the estate, would not be entertained, there appearing to be no danger of loss if defendant should be admitted to Tennessee for its recovery, and it also appearing that there were no assets of the estate in Alabama.[29]

In Woodruff v. Young,[30] complainant filed a bill in equity, alleging that her father had died in New York, leaving a will, which was duly probated there, whereby he gave one-third of his estate to her mother and the remaining two-thirds to herself, her brother and sister equally, and appointed her mother executrix; that her mother duly qualified and administered on the estate, in New York, and is still the executrix thereof; that afterwards complainant removed to Michigan; that the estate is not yet settled; that no accounting has been had with her, nor her share paid; and that one of the defendants, her sister's husband, is fraudulently appropriating the estate to his own use, and denies complainant's claim to any part thereof: *Held*, that the courts of Michigan had no jurisdiction over the matter.

In Stamps v. Moore,[31] one domiciled in Virginia made a will appointing an executor, who also resided there, and who proved the will there, and undertook its execution. By the will certain slaves in North Carolina were bequeathed to the plaintiff. *Held*, that he could not maintain detinue for them, because the executor could not "assent" to the legacy of the slaves

8 8 Gratt. 414.
9 32 Ala. 314.
10 32 Barb. 190.
11 5 R. I. 198.
12 3 P. Wms. 369.
13 17 Hun. 160, 79 N. Y. 136.
14 60 How. Pr. 511.
15 76 Va. 21.
16 84 N. Y. 63.
17 21 Ala. 580.
18 Jemison v. Smith, 37 Ala. 185.
19 10 Gray, 162.
20 3 Stew. Eq. 106.
21 7 Johns. Ch. 45.
22 5 How. Pr. 476.
23 54 Wis. 503.
24 2 McCrary, 622.
25 5 J. J. Marsh, 460.
26 Bromley v. Miller, 2 T. & C. (N. Y.) 575; Hood v. Mathers, 2 A. K. Marsh, 553; Ives v. Allen. 12 Vt. 589; Wilson v. Tappan, 6 Ohio, 80, (172); Budd v. Brooke, 3 Gill, 201; Ward v. Hearne, Busbee, 184.
27 27 Tex. 173.
28 31 Ala. 274.
29 See Coley's Estate, 14 Abb. Pr. 461.
30 43 Mich. 548.
31 2 Jones (N. C.) 80.

without making probate of the will and taking out letters testamentary in North Carolina.[32]

In Hedenberg v. Hedenberg,[33] it was held that, where an executor of a testator domiciled in New York, who was himself domiciled there at the time of his testator's death, afterwards moved into the State of Connecticut to reside, and brought with him property of his testator, he could not be held liable, in the latter State, to a creditor of his testator to the extent of the property brought there.

In Jenkins v. Lester,[34] a trust fund was created under the will of a New York testator for the benefit of his daughter Caroline, and his wife was made trustee. She proved the will in New York and accepted the trust. Complainant, as well as Caroline and her husband, resided in Maryland, and the trustee in Massachusetts. Complainant, claiming to be a creditor of Caroline, sought relief against her and her trustee in a Massachusetts court, and to obtain payment of his debt from the trust fund. The trustee had never accounted in New York. *Held*, that the creditor could not obtain the relief sought, because Caroline herself could not have enforced the trust in Massachusetts.[35]

In Field v. Gibson,[36] an executrix appointed in New Jersey, who had taken possession of premises rented by plaintiff to her testator, was held not liable to be sued at law for the rent thereof. Query, whether she would have been liable in equity for an accounting.[37]

In Webb's Case,[38] plaintiff began an action at law against B. for breach of covenant against encumbrances in a deed made by B. to plaintiff. Pending the action, B., a resident of New Jersey, died, and letters testamentary on his will were granted to his three sons in New Jersey. *Held*, that the action could not be revived against them by service on one of them in New York.

In Mahnken's Case,[39] four minor children, domiciled in Germany, where their mother also resided at her death, and where their guardian had been appointed, petitioned the court in this State for an order requiring their father's executors, who were residents of New Jersey, to pay to them or their guardian, the moneys due their mother from their father's estate. Their mother was alleged to have bequeathed to them all her property, but her will had not been proved here, nor any administration on her estate granted. *Held*, that the executors objecting, they could not be ordered to pay over the money, either to the children or to their guardian, although they admitted that they held for the mother's estate the amount claimed by the children; and that they would be required to pay it only to a legal representative of the mother here.

In Musselman's Appeal,[40] a testator residing in North Carolina appointed his brother, residing in Pennsylvania, his executor and trustee. The executor qualified in North Carolina in 1852, and filed an inventory, but never filed an account there. In 1874 he died, and M. was appointed administrator *de bonis non cum testamento annexo* of the testator. *Held*, that the executor and children of one of the *cestuis que trustent* could not sustain a suit in Pennsylvania to recover such sums as should be found to be due them under the will.[41]

It has been held that a non-resident plaintiff could not maintain a suit in another State, against executors appointed in a third State.[42] But, in Slatter v. Carroll,[43] a Maryland creditor of a testator who also lived in Maryland, was held capable of suing, in New York, the trustee who lived in New York, for the proceeds of lands lying in New York and devised to the trustee.

In Naylor v. Moody,[44] filing, in Indiana, letters testamentary granted to plaintiffs in Kentucky, was held insufficient to authorize plaintiffs to maintain a *scire facias* to revive a judgment obtained by their testator against the defendant—the letters should have been also recorded.[45]

To maintain a suit in another State, an executor must allege the probate of the will in his bill;[46] and, if alleged, probate may be taken out at any time before the hearing.[47]

But where the complainant claims, as heir, that the will is void, and sets it out in his bill, the defendant, as executor, need not allege or produce its probate.[48]

What is a sufficient certification of domiciliary probate to authorize probate of a foreign will, or its admittance as evidence in another State.[49]

In Gray v. Ryle,[50] plaintiff sued defendant, as executrix, to recover money alleged to be due him on a contract with her testator. The defendant, who had been appointed in New Jersey, did not demur, but appeared and answered on the merits. At the trial, she moved to dismiss the complaint for want of jurisdiction. *Held*, that it must be dismissed because plaintiff had not averred that defendant had brought into New York assets of the estate, and, as this concerned the power of the court, it was not waived by defendant's appearance and answer.[51]

It has been held that a guardian may sue or be sued anywhere.[52]

JOHN H. STEWART.

Trenton, N, Y.

[32] See Alfonso's Appeal, 70 Pa. St. 347.

[33] 46 Conn. 30.

[34] 131 Mass. 355.

[35] See also, Leland v. Smith, 131 Mass. 358, note; Emery v. Batchelder, 132 Mass. 452.

[36] 20 Hun. 274.

[37] See Atchison v. Lindsay, 6 B. Mon. 86; Patterson v. Pagan, 18 S. C. 584.

[38] 11 Hun. 124.

[39] 9 Stew. Eq. 518.

[40] 101 Pa. St. 165.

[41] See Van Dyke's Appeal, 31 Leg. Int. 69; S. C., Van Dyke v. Van Dyke, 9 Stew. Eq. 521, 11 Stew. Eq. 280.

[42] Magraw v. Irwin, 87 Pa. St. 139.

[43] 2 Sandf. Ch. 573.

[44] 2 Blackf. 247; 3 Blackf. 91.

[45] See Sayre v. Helme, 61 Pa. St. 299.

[46] Pelletreau v. Rathbone, Sax. 331; Pitts v. Melser, 72 Ind. 469; Kerr v. Moon, 9 Wheat. 565; Noonan v. Bradley, 9 Wall. 394; see Beckham v. Wittkowski, 64 N. C. 464; Berney v. Drexel, 12 Fed. Rep. 393.

[47] Osgood v. Franklin, 2 Johns. Ch. 1, 14 Johns. 527; Smith v. Peckham, 39 Wis. 414.

[48] Tarver v. Tarver, 9 Pet. 174.

[49] Chrisman v. Gregory, 4 B. Mon. 478; Melvin v. Lyons 10 Sm. & Marsh, 78; Applegate v. Smith, 31 Mo. 166; Townsend v. Moore, 8 Jones (N. C.), 147; Isham v. Gibbons, 1 Bradf. 69; Donegan v. Taylor, 6 Humph. 501; Slaughter v. Cunningham, 24 Ala. 260; Turner v. Linam, 55 Ga. 253; Lancaster v. McBryde, 5 Ired. 421; Otto v. Doty, 61 Iowa, 23; Carpenter v. Denoon, 29 Ohio St. 379; Bradstreet v. Kinsella, 76 Mo. 63; Townsend v. Downer, 32 Vt. 183.

[50] 18 Jones & S. (N. Y.) 198.

[51] See, further, 9 Am. Law Reg. 577, 641; Stirling-Maxwell v. Cartwright, L. R. (9 Ch. Div.) 173, (11 Ch. Div.) 522, 26 Moak, 10, 14, notes.

[52] Morrison's Case, 1 H. Bl. 665; Pedan v. Robb, 8 Ohio, 227; Moore v. Hood, 9 Rich. Eq. 311; Beeler v. Dunn, 3 Head, 87; Rinker v. Streit, 33 Gratt. 663; Hickman v. Dudley, 2 Lea, 375; but see Morrell v. Dickey, 1 Johns. Ch. 153; Curtis v. Smith, 6 Blatch. 537; Leonard v. Putnam, 51 N. H. 247; Todd v. Rhoads, 37 Pa. St. 60; West v. Gunther, 3 Dem. (N. Y.) 386; Vincent v. Starks, 45 Wis. 458; Trimble v. Dzieduzyiki, 57 How. Pr. 208.

RELATIONS OF RAILROAD COMPANIES TO EXPRESS COMPANIES.

MEMPHIS & L. R. CO. v. SOUTHERN EXP. CO.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

ST. LOUIS I. M. & S. RY. CO. v. SAME.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

MISSOURI, K. & T. RY. CO. v. DINSMORE, PRESIDENT OF THE ADAMS EXP. CO., ETC.

Appeal from the Circuit Court of the United States for the Distrfict of Kansas.

Supreme Court of the United States, March 1, 1886.

Each of the express companies had a separate contract with the railway companies whereby the railway companies agreed to give to the express companies certain express facilities and exclusive car space on their passenger trains for the transportation of express matter and express messengers, for a stipulated compensation to be paid by the express company to the railway company for such services and facilities. Each of the contracts contained a clause: "This agreement to remain in force for one year, and thereafter until thirty days' notice shall have been given by either party to the other of its desire to terminate the same," After the expiration of the year, each of the railway companies gave the express companies thirty days' notice of its intention to terminate the contract. Whereupon the express companies commenced these suits in the United States Circuit Courts, against the railway companies, to enforce an alleged legal duty on the part of the railway companies to continue to extend to the express companies the usual express facilities which they had been accustomed to enjoy under the contracts. The Circuit Court granted preliminary injunctions prohibiting the railway companies from excluding the express companies from their cars, and from denying them the usual and accustomed express facilities. Final decrees were entered in favor of the express companies, and the injunctions made perpetual, based upon the proposition that it had become by law and usage the duty of the railway company, to afford to the express companies, on their passenger trains, all the needed and usual facilities for doing an express business, including exclusive car space, and the transportation of goods in the custody of the express messenger, for a reasonable compensation, to be ascertained from time to time by the court, if the parties could not agree:

Held, I. That there is no common law obligation: none arising from usage, and none imposed by the constitutions or laws of Missouri, Kansas or Arkansas, making railway companies common carriers of common carriers.

Held, II. That there is no legal duty resting on the railway company to furnish to the Adams Company or the Southern Express Company facilities for doing express business on their roads, the same in all respects as those which the railway companies provided for themselves, or afforded to any other express company.

Held, III. That there is no legal duty resting on the railway companies to furnish express facilities to all persons and companies that demand them, and therefore no such duty to furnish such facilities to any particular company.

Held, IV. That the railway company performs its whole duty to the public at large and to each individual, when it affords the public all reasonable express accommodations. If this is done the railway company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided that they are such as to ensure reasonable promptness and security.

Held, V. That the decrees of the Circuit Court should be reversed, and the causes remanded, with directions to dissolve the injunctions, and, after adjusting the accounts between the parties for business done while the injunctions were in force, and decreeing the payment of any amounts that may be found to be due to the railway companies by the express companies, to dismiss the bills of the express companies.

Mr. Chief Justice WAITE delivered the opinion of the court, premising a full detail of the facts of these cases. From his exhaustive statement it appears that the suit of the Southern Express Company against the St. Louis, Iron Mountain etc. Company, was begun May 21, 1880, the bill stating the character of the business conducted by the Express Company, which is hereinafter sufficiently set forth. The bill states that on the 30th April, 1872, the Adams Express Company entered into a contract with one of the several constituent companies which were afterward consolidated into the defendant railroad company, by which the parties agreed that for a stated remuneration the Railroad Company would transport a limited quantity of freight daily for the Express Company. This contract was limited by its own terms to one year from the first day of May, 1872, and was to continue in force thereafter until either of the contracting parties should give to the other party thirty days notice of an intention to discontinue the contract. On the first of February, 1874, the Southern Express Company entered into contracts of the same nature, and to a like effect with the other two constituent companies of the defendant company, so that when the consolidation took place on May 16th, 1874, the composite company was under contracts terminable upon thirty days, to furnish transportation for a limited quantity of freight over different portions of its line of railway for each of the Express Companies.

On the 1st April, 1878, the Adams Express Company with the assent of the Railroad Company relinquished its interest in the contracts to the Southern Express Company together with all its business transacted on the lines of the defendant railroad company. On the 26th of March, 1880, the railroad company gave the stipulated thirty days notice of its intention to terminate the contract, and after a series of negotiations for a restoration of the antecedent arrangement, the express company filed the bill under consideration. The prayer of the bill was in the first instance for a preliminary injunction to prevent the business of the company from being stopped, and to preserve the *status quo* pending the litigation, and in

effect that the railroad company be compelled to continue to transport the express matter of the company to furnish to the Express Company all the appliances which it gives to its own express matter.

The answer of the railroad company states its willingness to transport express freight for the express company, but refuses to allow the express company any particular space in express cars for its own exclusive use, or to permit its messengers to ride in express cars or to take charge of complainant's freight.

The second suit was brought by the Southern Express Company against the Memphis etc. R. R. Company, and sets forth a contract like that already stated, and prays for the same kind and measure of relief as in the other case. The defendant company in its answer states that it intends to do its own express business, but recognizes its obligation to carry freight for the complainant in the same manner and upon the same terms as for other shippers. It submits that this is the extent of its duty to the complainant.

The third of these suits was brought by the Adams Express Company against the Missouri, Kansas and Pacific Railway Company. There was between these parties a contract similar in all essential respects to those already described, and like them terminable on thirty days' notice. On the 1st day of December, 1880, the railroad company gave the express company the stipulated notice that after the 1st of January, 1881, the railroad company would itself do the express business on its own road, and the express company soon after filed its bill, the prayer of which was substantially the same as those in the other cases.

To this bill the defendant company filed an answer which it subsequently withdrew and substituted a demurrer. Preliminary injunctions were granted, and much testimony was taken in the two cases, in which answers had been filed, there was in each case a final decree substantially in favor of the complainants; in those decrees the express business is recognized as a branch of the carrying trade, distinct from the ordinary transportation of freight, and its rules and usages, which have grown up with the trade, should be regarded by the courts as an essential element of all questions growing out of such trade. The court held that among those usages was the practice of committing the custody of the freight to the messenger of the express company, and of excluding it from the inspection of the carrier's servants; and that it is the duty of the carrier to transport the freight of the express company upon these conditions for a just and reasonable compensation, and to afford to the express company all the usual express facilities to the same extent as to any other company engaged in the express business. The decree perpetually enjoined the defendant railroad company from withholding from the express company the facilities to which under the decree the latter was entitled.

The decrees in each case were identical except in some minor matters of detail, and from each of them the railroad companies respectively appealed to the Supreme Court of the United States.

After reciting the foregoing facts Mr. Chief Justice Waite proceeds as follows:

The cases are now here for review on these appeals.

The evidence shows that the express business was first organized in the United States about the year 1839. The case of New Jersey Steam Nav. Co. v. Merchants' Bank, 6 How. 344, grew out of a loss by the burning of the steamboat Lexington, on Long Island sound, in January, 1840, of $18,000 in gold and silver coin, while in charge of William F. Harnden, an express carrier, for transportation from New York to Boston. In the report of this case is found a copy of one of the earliest advertisements of the express business, as published in two of the Boston newspapers in July, 1839. It is as follows:

"BOSTON AND NEW YORK EXPRESS PACKAGE CAR —NOTICE TO MERCHANTS, BROKERS, BOOKSELLERS, AND ALL BUSINESS MEN.

"Wm. F. Harnden, having made arrangements with the New York & Boston Transportation and Stonington and Providence Railroad Companies, will run a car through from Boston to New York, and *vice versa*, via Stonington, with the mail train, daily, for the purpose of transporting specie, small packages of goods, and bundles of all kinds. Packages sent by this line will be delivered on the following morning, at any part of the city, free of charge. A responsible agent will accompany the car, who will attend to purchasing goods, collecting drafts, notes, and bills, and will transact any other business that may be intrusted to him. Packages for Philadelphia, Baltimore, Washington, New Haven, Hartford, Albany, and Troy, will be forwarded immediately on arrival in New York.

"N. B. Wm. F. Harnden is alone responsible for any loss or injury of any articles or property committed to his care; nor is any risk assumed by, or can any be attached to, the Boston and New York Transportation Company, in whose steamers his crates are to be transported, in respect to it or its contents at any time."

The report also contains a copy of the contract between Harnden and the New Jersey Steam Navigation Company, the owner of the Lexington, dated the first of August, 1839, for the facilities to be afforded Harnden for his business on the steamers of that company. This contract was similar to one made a short time before with the Boston and New York Transportation Company, a company which became merged in the New Jersey Steam Navigation Company, August 1, 1839, and it provided that Harnden, in consideration of $250 per month, was to have the privilege of transporting in the steamers of that company

between New York and Providence, via Newport and Stonington, not to exceed one each day from New York and from Providence, "one wooden crate of the dimensions of five feet by five feet in width and height, and six feet in length, (contents unknown)." It was also stipulated and agreed that "the said crate, with its contents, is to be at all times exclusively at the risk of the said William F. Harnden; and the said New Jersey Steam Navigation Company will not, in any event, be responsible either to him or his employers for the loss of any goods, wares, merchandise, notes, bills, evidences of debt, or property of any and every description, to be conveyed or transported by him in said crate, or otherwise, in any manner, in the boats of the said company." It was also further provided that Harnden should attach to all his advertisements for business, and to his bills of lading, notices in the form of that at the foot of his advertisement, a copy of which is given above, and that he should not violate any of the provisions of the post-office laws, or interfere with the navigation company in its transportation of letters or papers, or carry powder, matches, or other combustible materials of any kind calculated to endanger the safety of the boats or the property or persons on board. At the end was this clause: "And that this contract may be at any time terminated by the New Jersey Steam Navigation Company, or by the said Harndon, upon one month's notice given in writing."

Such was the beginning of the express business which has grown to an enormous size, and is carried on all over the United States and in Canada, and has been extended to Europe and the West Indies. It has become a public necessity, and ranks in importance with the mails and with the telegraph. It employs for the purposes of transportation all the important railroads in the United States, and a new road is rarely opened to the public without being equipped in some form with express facilities. It is used in almost every conceivable way, and for almost every conceivable purpose by the people and by the government. All have become accustomed to it, and it cannot be taken away, without breaking up many of the long-settled habits of business, and interfering materially with the conveniences of social life. In this connection it is to be kept in mind that neither of the railroad companies involved in these suits is attempting to deprive the general public of the advantages of an express business over its road. The controversy, in each case, is not with the public, but with a single express company. And the real question is not whether the railroad companies are authorized by law to do an express business themselves; nor whether they must carry express matter for the public on their passenger trains, in the immediate charge of some person specially appointed for that purpose; nor whether they shall carry express freights for express companies, as they carry like freights for the general public—but whether it is their duty to furnish the Adams Company or the Southern Company facilities for doing an express business upon their roads the same in all respects as those they provide for themselves or afford to any other express company.

When the business began railroads were in their infancy. They were few in number, and for comparatively short distances. There has never been a time, however, since the express business was started that it has not been encouraged by the railroad companies; and it is no doubt true, as alleged in each of the bills filed in these cases, that "no railroad company in the United States * * * has ever refused to transport express matter for the public, upon the application of some express company, of some form of legal constitution. Every railway company * * * has recognized the right of the public to demand transportation by the railway facilities which the public has permitted to be created of that class of matter which is known as 'express matter.'" Express companies have undoubtedly invested their capital and built up their business in the hope and expectation of securing, and keeping for themselves, such railway facilities as they needed, and railway companies have likewise relied upon the express business as one of their important sources of income. But it is neither averred in the bills, nor shown by the testimony, that any railroad company in the United States has ever held itself out as a common carrier of express companies; that is to say, as a common carrier of common carriers. On the contrary, it has been shown, and in fact it was conceded upon the argument, that down to the time of bringing these suits no railroad company had taken an express company on its road for business except under some special contract, verbal or written, and generally written, in which the rights and duties of the respective parties were carefully fixed and defined. These contracts, as is seen by those in these records, vary necessarily in their details, according to the varying circumstances of each particular case, and according to the judgment and discretion of the parties immediately concerned. It also appears that, with very few exceptions, only one express company has been allowed by a railroad company to do business on its road at the same time. In some of the States statutes have been passed which either in express terms, or by judicial interpretation, require railroad companies to furnish equal facilities to all express companies, (Gen. Laws N. H. c. 163, § 2; Rev. St. Me. 494, § 134;) but these are of comparatively recent origin, and thus far seem not to have been generally adopted.

In Missouri, by the constitution, railways are "declared public highways and railroad companies common carriers." The general assembly is also required "to pass laws to correct abuses and to prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this State," and "to pass laws

establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties." Article 12, § 14. And by section 23 it is provided that "no discrimination in charges or facilities in transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback, or otherwise, and no railroad company or any lessee, manager, or employee thereof, shall make any preference in furnishing cars or motive power." We have not been referred to any statute of the State which does more than reproduce these constitutional provisions in substantially the same general language.

Article 17, § 1, of the constitution of Arkansas, provides that "all railroads, canals, and turnpikes shall be public highways, and all railroad and canal companies shall be common carriers." Sections 3, 5, and 6 of the same article are as follows:

"Sec. 3. All individuals, associations, and corporations shall have equal rights to have persons and property transported over railroads, canals, and turnpikes, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within the State, or coming from or going to any other State."

"Sec. 5. No president, director, officer, agent, or employe of any railroad or canal company, shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of a common carrier of freight or passengers, over the works owned, leased, controlled, or worked by such company, nor in any arrangement which shall afford more advantageous terms or greater facilities than are offered or accorded to the public."

"Sec. 6. No discrimination in charge or facilities for transportation shall be made between transportation companies and individuals, nor in favor of either, by abatement, drawback, or otherwise; and no railroad or canal company, or any lessee, manager, or employe thereof, shall make any preference in furnishing cars or motive power."

The legislation of this State has not, so far as we have been advised, extended the operation of these constitutional provisions in a way to affect the questions now to be decided.

In Kansas the following statute is in force:

"Sec. 55. Every railway corporation in this State which now is, or may hereafter be, engaged in the transportation of persons or property, shall give public notice of the regular time of starting and running its cars, and shall furnish sufficient accommodations for the transportation of all such passengers, baggage, mails, and express freight as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting, at the junction of other roads, and at the several stopping places; and they are hereby required to stop all trains carrying passengers at the junction or intersection of other railways, a sufficient length of time to allow the transfer of passengers, personal baggage, mails, and express-freight from the trains or railways so connecting or intersecting, or they may mutually arrange for the transportion of such persons and property over both roads without change of cars; and they shall be compelled to receive all passengers and freight from such connecting and intersecting roads whenever the same shall be delivered to them." Comp. Laws Kan. 1879, 225, c. 23.

The reason is obvious why special contracts in reference to this business are necessary. The transportation required is of a kind which must if possible, be had for the most part on passenger trains. It requires not only speed, but reasonable certainty as to the quantity that will be carried at one time. As the things carried are to be kept in the personal custody of the messenger or other employe of the express company, it is important that a certain amount of car space should be specially set apart for the business, and that this should, as far as practicable, be put in the exclusive possession of the expressman in charge. As the business to be done is "express," it implies access to the train for loading at the latest, and for unloading at the earliest, convenient moment. All this is entirely inconsistent with the idea of an express business on passenger trains free to all express carriers. Railroad companies are by law carriers of both persons and property. Passenger trains have from the beginning been provided for the transportation, primarily of passengers and their baggage. This must be done with reasonable promptness and with reasonable comfort to the passenger. The express business on passenger trains, is in a degree subordinate to the passenger business, and it is consequently the duty of a railroad company in arranging for the express to see, that there is as little interference as possible with the wants of passengers. This implies a special understanding and agreement as to the amount of car space that will be afforded, and the conditions on which it is to be occupied, the particular trains that can be used, the places at which they shall stop, the price to be paid, and all the varying details of a business which is to be adjusted between two public servants, so that each can perform in the best manner its own particular duties. All this must necessarily be a matter of bargain, and it by no means follows that because a railroad company can serve one express company in one way it can as well serve another company in the same way, and still perform its other obligations to the public in a satisfactory manner. The car space that can be given to the express business on a passenger train is, to a certain extent, limited, and, as has been seen, that which is allotted to a particular carrier must be, in a measure, under his exclusive control. No express company can do a successful business unless it is at all times reasonably sure of the means it requires for transportation. On important lines one

company will at times fill all the space the railroad company can well allow for the business. If this space had to be divided among several companies, there might be occasions when the public would be put to inconvenience by delays which could otherwise be avoided. So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security.

The inconvenience that would come from allowing more than one express company on a railroad at the same time was apparently so well understood both by the express companies and the railroad companies that the three principal express companies, the Adams, the American, and the United States, almost immediately on their organization, now more than thirty years ago, by agreement divided the territory in the United States traversed by railroads among themselves, and since that time each has confined its own operations to the particular roads which, under this division, have been set apart for its special use. No one of these companies has ever interfered with the other, and each has worked its allotted territory, always extending its lines in the agreed directions as circumstances would permit. At the beginning of the late civil war the Adams Company gave up its territory in the Southern States to the Southern Company, and since then the Adams and the Southern have occupied, under arrangements between themselves, that part of the ground originally assigned to the Adams alone. In this way these three or four important and influential companies were able substantially to control, from 1854 until about the time of the bringing of these suits, all the railway express business in the United States, except upon the Pacific roads and in certain comparatively limited localities. In fact, as is stated in the argument for the express companies, the Adams was occupying when these suits were brought 155 railroads, with a mileage of 21,216 miles; the American 200 roads, with a mileage of 28,000 miles; and the Southern ninety-five roads, with a mileage of 10,000 miles. Through their business arrangements with each other, and with other connecting lines, they have been able for a long time to receive and contract for the delivery of any package committed to their charge at almost any place of importance in the United States and in Canada, and even at some places in Europe and the West Indies. They have invested millions of dollars in their business, and have secured public confidence to such a degree that they are trusted unhesitatingly by all who need their services. The goodwill of their business is of very great value if they can keep their present facilities for transportation. The longer their lines and the more favorable their connections the greater will be their own profits and the better their means of serving the public. In making their investments and in extending their business they have undoubtedly relied on securing and keeping favorable railroad transportation, and in this they were encouraged by the apparent willingness of railroad companies to accommodate them; but the fact still remains that they have never been allowed to do business on any road except under a special contract, and that as a rule only one express company has been admitted on a road at the same time.

The territory traversed by the railroads involved in the present suits is part of that allotted in the division between the express companies to the Adams and Southern Companies, and in due time after the roads were built, these companies contracted with the railroad companies for the privileges of an express business. The contracts were all in writing, in which the rights of the respective parties were clearly defined, and there is now no dispute about what they were. Each contract contained a provision for its termination by either party on notice. That notice has been given in all the cases by the railroad companies, and the express companies now sue for relief. Clearly this cannot be afforded by keeping the contracts in force, for both parties have agreed that they may be terminated at any time by either party on notice; nor by making new contracts, because this is not within the scope of judicial power.

The exact question, then, is whether these express companies can now demand as a right what they have heretofore had only as by permission. That depends, as is conceded, on whether all railroad companies are now by law charged with the duty of carrying all express companies in the way that express carriers, when taken, are usually carried, just as they are with the duty of carrying all passengers and freights when offered in the way that passengers and freight are carried. The contracts which these companies once had, are now out of the way, and the companies at this time possess no other rights than such as belong to any other company or person wishing to do an express business upon these roads. If they are entitled to the relief they ask, it is because it is the duty of the railroad companies to furnish express facilities to all alike who demand them.

The constitutions and the laws of the States in which the roads are situated place the companies that own and operate them on the footing of common carriers, but there is nothing which in positive terms requires a railroad company to carry all express companies in the way that under some circumstances they may be able without inconvenience to carry one company. In Kansas the Missouri, Kansas & Texas Company must furnish sufficient accommodations for the transport-

ation of all such express freight as may be offered, and in each of the States of Missouri, Arkansas, and Kansas, railroad companies are probably prohibited from making unreasonable discriminations in their business as carriers; but this is all. Such being the case, the right of the express companies to a decree, depends upon their showing the existence of a usage, having the force of law in the express business, which requires railroad companies to carry all express companies on their passenger trains as express carriers are usually carried. It is not enough to establish a usage to carry some express company, or to furnish the public in some way with the advantages of an express business over the road. The question is not whether these railroad companies must furnish the general public with reasonable express facilities, but whether they must carry these particular express carriers for the purpose of enabling them to do an express business over the lines.

In all these voluminous records there is not a syllable of evidence to show a usage for the carriage of express companies on the passenger trains of railroads, unless specially contracted for. While it has uniformly been the habit of railroad companies to arrange, at the earliest practicable moment, to take one express company on some or all their passenger trains, or to provide some other way of doing an express business on their lines, it has never been the practice to grant such a privilege to more than one company at the same time, unless a statute or some special circumstances made it necessary or desirable. The express companies that bring these suits are certainly in no situation to claim a usage in their favor on these particular roads, because their entry was originally under special contracts, and no other companies have ever been admitted except by agreement. By the terms of their contracts they agreed that all their contract rights on the roads should be terminated at the will of the railroad company. They were willing to begin and to expand their business upon this understanding and with this uncertainty as to the duration of their privileges. The stoppage of their facilities was one of the risks they assumed when they accepted their contracts, and made their investments under them. If the general public were complaining because the railroad companies refused to carry express matter themselves on their passenger trains, or to allow it to be carried by others, different questions would be presented. As it is, we have only to decide whether these particular express companies must be carried notwithstanding the termination of their special contract rights.

The difficulty in the cases is apparent from the form of the decrees. As express companies had always been carried by railroad companies under special contracts, which established the duty of the railroad company upon the one side, and fixed the liability of the express company on the other, the court, in decreeing the carriage, was substantially compelled to make for the parties such a contract for the business as in its opinion they ought to have made for themselves. Having found that the railroad company should furnish the express company with facilities for business, it had to define what those facilities must be, and it did so by declaring that they should be furnished to the same extent and upon the same trains that the company accorded to itself or to any other company engaged in conducting an express business on its line. It then prescribed the time and manner for making the payment for the facilities, and how the payment should be secured, as well as how it should be measured. Thus, by the decrees, these railroad companies are compelled to carry these express companies at these rates, and on these terms, so long as they ask to be carried, no matter what other express companies pay for the same facilities, or what such facilities may, for the time being, be reasonably worth, unless the court sees fit, under the power reserved for that purpose, on the application of either of the parties, to change the measure of compensation. In this way, as it seems to us, "the court has made an arrangement for the business intercourse of these companies such as, in its opinion, they ought to have made for themselves," and that, we said in Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co., 110 U. S. 673; s. c., 4 Sup. Ct. Rep. 185, followed at this term in Pullman's Palace Car Co. v. Missouri Pac. Ry. Co., 115 U. S. 587; s. c., 6 Sup. Ct. Rep. 194, could not be done. The regulation of matters of this kind is legislative in its character, not judicial. To what extent it must come, if it comes at all, from Congress, and to what extent it may come from the States, are questions we do not now undertake to decide; but that it must come, when it does come, from some source of legislative power we do not doubt. The legislature may impose a duty, and when imposed it will, if necessary, be enforced by the courts, but unless a duty has been created either by usage or by contract or by statute, the courts cannot be called on to give it effect.

The decree in each of the cases is reversed, and the suit is remanded, with directions to dissolve the injunction; and, after adjusting the accounts between the parties for business done while the injunctions were in force, and decreeing the payment of any amounts that may be found to be due to dismiss the bills.

MATTHEWS, J., took no part in the decision of these cases.

WEEKLY DIGEST OF RECENT CASES.

1. BAILMENT—*Feigned Issue to try the Title to Property*—A. drew a note at seven months to the order of B., which was indorsed by B. and discounted by a bank. A. with the money was to buy cattle for B., and if A. paid the note, he was to own the cattle; he purchased the cattle, but before the note matured they were levied on by one of his creditors. *Held*, in a feigned issue to test title, that there was no error in the court charging the jury, in substance, that if they believed these facts to exist, the cattle so bought by A. were not subject to levy and sale for his debts. *Wall v. Wall*, S. C. Penn., Jan. 4, 1886—East. Rep.

2. COMMON CARRIERS—*A Railroad Company Having Issued Commutation Tickets, Must Sell Them To Every Person Applying for Them.*—COMMUTATION TICKETS—*Particular Cases.*—A railroad company chartered as a carrier of passengers and freight, is under no obligation to establish commutation rates for a particular locality; but when it has established such rates, and commutation tickets are sold thereat to the public, the refusal of such a ticket to such a particular individual, under the same circumstances and upon the same conditions as such tickets are sold to the rest of the public, is an unjust discrimination against him, and a violation of the principle of equality which the company is bound to observe in the conduct of its business. The relator was the holder of a monthly commutation ticket. On one occasion, during the month for which his ticket was issued, he left it at home by inadvertence, and, when on the train, being asked for his ticket and not finding it he tendered to the conductor a regular trip ticket provided it should not be punched, and should be returned to him the next morning on presentation of his commutation ticket, and refused otherwise to pay his fare. This request the conductor refused, for the reason that he had no right to permit the relator to ride on a ticket which should not be punched, and the relator remain d on the train without paying fare or surrendering the trip ticket, and without any disturbance beingmade. *Held*, (1) that the relator, by such conduct, made himself liable to be ejected from the train, and, it may be, to the forfeiture of the commutation ticket he then held, but that such misconduct did not justify the company in refusing to sell the relator commutation tickets thereafter; and (2) that for such wrongful refusal the relator may have remedy by *mandamus*. *State, ex rel Delaware etc.*, S. C. New Jersey, Feb. 26, 1886, Atl. Rep.

3. CONSTITUTIONAL LAW—*Independent Tax on Particular Property—Taxing Under General Laws—Uniformity—Railroad Tax.*—A separate independent property tax cannot, under the Constitution of this State, be put on property arbitrarily selected for the purpose and set apart from other property of the same kind. The constitutional amendment that requires that "property shall be assessed for taxes under general laws, and by uniform rules," prohibits the selection simply at the legislative will of the property of two classes of corporations, separating it from the mass of similar property and imposing an exclusive tax on the property so selected. A property tax for State purpose imposed on the lands and tangible personal property used by railroad and canal companies and on their franchises, such tax touching no other property, declared unconstitutional. *Cent. R. R. Co. v. State Board of Assessors*, S. C. New Jersey, February, 1886—Eastern Rep.

4. CONTRACT "PROMPT SHIPMENT."—*Delay—Counterclaim—Appeal—Harmless Frror—Cured by Verdict.*—Plaintiff and defendant entered into two written contracts in the city of New York, both dated October 29, 1879, by one of which plaintiff sold to defendant two hundred bales of Leghorn cotton stripes, "for prompt sail shipment," and by the other, two hundred and fifty bales of the same goods, "for prompt steamer shipment." The Leghorn was to be shipped from Leghorn, Italy, to defendant at New York. A part of the Leghorn, called for by the contract, was not offered to be delivered until the latter part of March, 1880, when it was refused, and the defendant refused to accept any delivery under the contracts, after the twenty-fifth of March, the market price having, in the meantime, largely depreciated. It appeared in evidence that the time by mail, between New York and Leghorn was twelve days, but, at that time, orders could be sent by cable; that the average time of passage from Leghorn to New York was, for steamer forty days, and for sailing vessels sixty-five days; that during the months of November, December and January, after the making of the contract, a large number of sail and steam vessels left Leghorn for New York, by which no shipments were made under the contract. *Held*, that these facts were sufficient to render it incumbent upon the plaintiff, to explain the delay in making the prompt shipment contracted for, and to show why he did not avail himself of the facilities, apparently within his reach, to comply with his contract, and that the circumstances proved, established a *prima facie* case authorizing an inference of culpable negligence on the part of the plaintiff, entitling defendant to recover on his counterclaim, the difference between the contract price of the goods, and their market price at New York, at the time when they should have been delivered. A judgment will not be reversed for errors in the judges charge to the jury, when it appears, from the whole case, that the verdict could not have been different from what it was in respect to the subject referred to, and thus could not have been influenced by the erroneous charge. *Phillips v. Taylor*, Court of Appeals, New York, East. Rep.

5 COVENANT—*Warranting Title to Personal Property—Chattel Mortgage—Eviction.*—Defendant sold plaintiff a quantity of store fixtures by a bill of sale, containing a covenant whereby he agreed to "warrant and defend the sale thereof against all and every person or persons," and also to satisfy a chattel mortgage then on the property. He failed to satisfy the mortgage and it was foreclosed and the property sold. Plaintiff afterwards bought the

property of the party purchasing it at the foreclosure sale and it was never removed from his possession. *Held*, that plaintiff could recover of defendant the amount of the mortgage which he had failed to satisfy, and that an actual eviction was not necessary in order to entitle him to maintain an action for breach of warranty of title. *Cahill v. Smith*, Court of Appeals, New York, February 2, 1886; Eastern Rep.

6. CRIMINAL LAW—*Murder—Self defense—Real and Apparent Necessity—Instructions.*—In a prosecution for murder, the court instructed the jury that "the law of self-defense is founded on necessity, and in order to justify the taking of life upon this ground, it must not only appear that the defendant had reason to believe, that he was in danger of his life or of receiving great bodily harm, but it must also appear to the defendant's comprehension, as a reasonable man, that to avoid such danger it was necessary for him to take the life of the assailant:" *Held*, that such instruction was not erroneous as doing away with the doctrine of apparent necessity, as a necessity apparently real, is real, as far as defendant's conduct is regarded. *People v. De Witt*, S. C. California, February 25, 1886. West Coast Rep.

EASEMENTS.—*Ways—Streets—Dedication—Evidence—Village Plat—Declarations and Acts of Owner—Intent to Dedicate—Acceptance by Public.*—In an action for trespass *quare clausum* in which defendants set up that the *locus in quo* was a street, the plat of the village in which the alleged street was located, may be admitted in evidence merely to show the situation of the premises, and to enable the jury to get a better idea of the locality. In order to prove the dedication of a street to the public, it may be shown that the former owner of the land sold lots laid out on a plat, and pointed out to the purchaser where said street ran, and charged more for such lots because bounded by said street. In order to constitute a valid dedication to the public of a highway by the owner of the soil, there must be an intention on the part of the owner to dedicate it, and it must appear that there was an absolute dedication of the way to the public. The owner of the soil must not only intend to dedicate the land as a highway, but the public must accept the dedication in order to constitute a public highway. To constitute such acceptance, it is not necessary that the officers of the town or village should formally accept the gift in behalf of the public; but travel by the public, to such an extent, and to such a length of time, as to show that the public convenience and accommodation require the road, is a sufficient acceptance. On this latter point the court says: "To constitute such acceptance, it is not necessary that the officers of the town or village should formally accept the gift in behalf of the public, but travel by the public, to such an extent and for such a length of time as to show that the public convenience and accommodation require the road, is a sufficient acceptance; but, in order to constitute a dedication, it must clearly appear from the evidence the strip claimed to be a highway was used by the public as a public highway, with the knowledge and assent of the owner of the soil." *Eastland v. Fogo*, S. C. Wis., March 16, 1886, N. W. Rep.

8. EMINENT DOMAIN.—*Assessment of Damages for taking Water Rights.*—An appeal supersedes the commissioners' appraisement, and the damages must be determined without reference to it. The measure of damages, when the whole property is taken, is the market value, and when a part only is taken, it is the difference in value before and after the taking. This difference is to be ascertained in view of the uses to which it might be put before and after. Evidence of the cost of doing this or doing that to supply the loss of water is competent only incidentally as a means of determining the diminution of value. The condemnation being of the right to take and use all the waters of a stream at a certain point, compensation is to be made on the basis of the market value of the quantity of water in the stream at that point. This principle is not affected by the fact that the present appliances of the city are incapable of holding or diverting the whole supply. *Henderson v. City of Orange*, S. C. N. J., February Term, 1886, N. J. Law Jour.

9. EQUITY—*Specific Performance of Contract—Exchange of Lands—Removal of Tax Lien—Time not of Essence of Contract—Fraudulent Representation as to Value*—Where time is not of the essence of the contract, and the thing to be done (in this case the removal of a tax lien from land to be exchanged) can be as well done at a later time as an earlier day, without detriment to the party for whom the thing is to be done, delay will not defeat a specific performance. A mere expression of opinion as to the value of land to be exchanged for other land will not amount to a false representation. *Maltby v. Austin*, S. C. Wis., March 16, 1886—N. W. Rep.

10. EQUITY.—*Reformation of Contract—Intention of Parties — Meeting of Minds of Contracting Parties.*—The proposition which lies at the foundation of every suit to reform a written contract is that the court cannot make such a contract as it thinks the parties ought to have made, or would have made, if better informed, but merely makes it what the parties intended it to be. Every reformation of a contract by the court, presupposes that there has been an agreement actually made—a meeting of the minds of the parties as to the terms of the contract—but which, for some cause, they have failed to fully or correctly express in the writing; and the burden is upon the party asking the reformation, to prove, both that there was this agreement and that the writing deviates from it. In such a case the court merely reforms it so as to correctly express the actual agreement of the parties. *St. Anthony's Falls, etc. Co. v. Merriman*, S. C. Minn., March 1, 1886, N. W. Rep.

11. EVIDENCE.—*Witness — Leading Question.*— A witness, after testifying to having been on the witness-stand, cannot be compelled to state for what she was called to testify. A question, "Whom did you see watching around the house?" (the place of homicide,) is not leading. *People v. De Witt*, S. C. Cal., February 25, 1886, West Coast Rep.

12 EVIDENCE—*Preliminary Proof—Admissibility of Written Instrument—Charge as to—Ancient Instrument — Instruction as to.*—The preliminary proof as to the genuineness of a written instrument, proposed to be offered in evidence, before the judge, is merely an earnest of the issue. What shall be sufficient for this purpose, cannot, probably, be embraced in a definition that would suit the peculiar facts of every case. It would be always proper to admit the paper when the proof is sufficient, if none, opposing, is offered, to sustain a

verdict in favor of the genuineness of the instrument. In some cases it might be proper to admit it on less than this. It is not a correct practice for the court to charge the jury that such and such proof constituted *prima facie* evidence of the execution, or genuineness, of the paper in question. The jury should be informed of the conditions upon which the law disposes with the ordinary methods of proving the execution of private writings, but whether the conditions exist or not, and whether the circumstances proved, to corroborate, the antiquity and genuineness of the paper, are sufficient, after the court has heard enough to make the issue, should be determined by the jury as any other fact. *Beaumont Pasture Co. v. Preston*, S. C. Tex., March, 1886, Tex. Court Rep.

13. FRAUD—*Insolvency—Right to Rescind Sale—Fraudulent Assignment for Benefit of Creditors—Advancement of Freight by Assignee—Use of Part of Goods—Right to Reclaim Balance*—Where a merchant orders goods, knowing himself to be insolvent, without disclosing his insolvency, and with the preconceived purpose of not paying for them at all,or, at most, only a very small per cent., and with the further preconceived purpose of having them swell his assets for the benefit of those whom he intends to make his preferred creditors, the purchase is fraudulent, and the vendor, upon discovering the fraud, may rescind the contract, and replevy the goods from the assignee for benefit of creditors. The fact that the assignee advances the freight on the goods to the carrier will not make him a *bona fide* holder, nor entitle him to retain the goods until he shall be reimbursed. Nor will the fact that the vendee has appropriated to his own use a part of the goods, before the vendor discovered the fraud, prevent the vendor from reclaiming the goods not appropriated after he has discovered the fraud. *Lee v. Simmons*, S. C. Wis. 16, March, 1886.—N. W. Rep.

14 INSURANCE—*Keeping Hazardous and Extra-Hazardous Articles—Permission to keep such Articles—What keeping, such Permission will not Authorize*—The policy on a hotel provided that the assured should not keep any burning fluid without written permission; that kerosene, carbon oils of any description, or any other inflammable liquid, are not to be stored, used, kept, or allowed on the premises, temporarily permanently, for sale or otherwise, without written permission, except the use of refined coal, kerosene or, other carbon oil for lights if the same is drawn and the lamps filled by daylight. Otherwise, the policy shall be null and void. *Held*, That an averment of the keeping and using of kerosene in violation of the condition, sufficiently alleges its use otherwise than for lights, and its drawing, otherwise than by daylight. *Held*, That a violation of the conditions by any one, permitted by the insured to occupy and control the premises, is a violation by the insured. *Held*, That an indorsement on the policy of privilege to use gasoline gas, gasometor, blower and generator, being distant sixty feet from the building, did not sanction the keeping or storing of gasoline, except as needed for actual use in the apparatus, and where such use of the apparatus had been discontinued, the further keeping was not authorized. *Liverpool. London and Globe Ins. Co. v. Gunther*, S. C. United States, December 21, 1886, Ins. Law Jour.

15. NEGLIGENCE.—*Dilapidated Shed near Street—Right of Traveler on Street—Damage to an Infant—Opinion as to Condition of Structure—Trial—Supplemental or Explanatory Instructions to a Jury.*—The erector of a nuisance is responsible for the damage caused by it, notwithstanding he may have surrendered the premises on which it is erected to his landlord. A person has a right to stop on a public street or thoroughfare; and, if injured by a falling structure while so stopping, the act of stopping cannot be construed into contributory negligence. Parent may recover such prospective damages as may be reasonably expected to occur, and damages for the loss of the infant's services up to the age of twenty-one years. The fact that "prudent and sagacious persons" supposed the structure to be in a safe condition is no defense in an action for damages for an injury caused by its fall; more especially when there is abundant testimony as to the actual physical condition of the structure at the time the injury occurred. The court is clearly within its province, in explaining orally to a jury an instruction which is not clear to, or misunderstood by them. *Hussey v. Ryan*, S. C. Md., January 15, 1886, Atl. Rep.

16. NEGLIGENCE—*Railroad—"Passenger"—Waiting at Station—Leaving a Moving Train—Question for Jury—Fear of Personal Danger*—A lady waiting at a railroad station for passage upon a train soon to depart, was invited by the ticket agent to sit in an empty car standing on the side-track while the station-room was being cleaned. *Held*, that she was entitled to the same protection from the company while in the car as if in the regular waiting-room; in either case she was a passenger in the care of the company. The train to which the car was attached began to be moved without conductor or brakeman on board, and without signal or notice. The ladies were startled and alarmed lest they should be carried away, and tney hastened to the rear of the car and jumped out, while the car was still abreast of the platform and apparently moving slowly. One of them was thrown down and injured, and obtained a verdict against the company of $3,091.66 for that injury. *Held*, that the facts did not require that the verdict be set aside. It is *prima facie* evidence of negligence for a passenger to jump upon or off a moving train. In an action against a railroad company for an injury received in jumping from a moving train, the plaintiff must show a reasonable excuse for the act, and that is ordinarily a question of fact for the jury. Fear of personal danger is not the only excuse that will exonerate a person in alighting from a moving train. In some cases, and under certain circumstances, a person is justified in so doing to save himself serious inconveniences. *Shannon v. Boston, etc. R. R. Co.*, S. C. Me., Dec. 22, 1885.—East. Rep.

17. PARTNERSHIP.—One partner agreed, in writing, to sell to a co-partner, his interest in the company's property, consisting of a store, a stock of goods, furniture therein, and some other property, the whole worth about $25,000; the sale was to be at cost for most of the property, and for the balance at an appraisal, if the parties could not agree on its value; and the terms were cash on delivery, and either party who should break the contract, should forfeit to the other the sum of $500. *Held*,

that the $500 was intended by the parties to be liquidated damages. *Maxwell v. Allen*, S. C. Me., Dec. 21, 1885, N. Eng. Rep.

18. PRACTICE—*Evidence—Juror Biased—Juror Unfriendly to Attorney—Expert Witness—Cross-Examination as to Knowledge— Standard Authors*—It is not error for a trial court to sustain a challenge to a juror who testifies upon examination as to his competency, that he resided in the neighborhood where one of the parties resided, and had a great deal of talk about the case; that he was not free from bias; and that he thought this condition of his mind would influence him in his verdict. Unfriendly feeling towards an attorney engaged in a trial is not sufficient ground for a challenge of a juror for cause, he being competent in all other respects, when it is shown by his testimony that he would render a fair and impartial verdict uninfluenced by such feeling. Where a witness is examined in the trial of a cause as an expert, and testifies as to his opinions on scientific questions involved in his profession, it is competent upon cross-examination to inquire as to the extent of his knowledge, and his familiarity with the accredited standard authors of his profession. *Hutchison v. State*, S. C. Neb., Feb. 24, 1886.—N. W. Rep.

19. VENDOR AND VENDEE.—*Contract Signed by one Party — Statute of Frauds—Description of Land—Extrinsic Evidence—Failure of Quantity of Land—Tender of Proportionate Part of Purchase Money—Specific Performance.*—The fact that a contract for the conveyance of land is signed by the vendor alone will not prevent a specific performance, if it is otherwise sufficient. The law will not declare a contract for the sale of land void for uncertainty, when the light which contemporaneous facts and circumstances furnish, render the description definite and certain, and a description of the property which can thus be rendered certain, will be regarded as sufficiently certain to enforce specific performance. Where plaintiff sought the specific performance of a contract to convey land, with the improvements and stock thereon, on tender of payment of a proportion of the purchase money equal to the value of the actual number of acres in the tract, which was smaller than was supposed at the time of making the contract, the bill was *held* demurrable. *Doctor v. Hellberg*, S. C. Wis., March 16, 1886, N. W. Rep.

20. WILLS.—*Life Estate—Landlord and Tenant—Remedies—Term.*—Where a testator devises to his widow a farm for life, and provides that on the arrival of his son at twenty-one he is to have the refusal of renting the farm from her by paying one-half of everything that is raised thereon, and by sharing equally the expense of supporting his brother, the son acquires a merely personal right or privilege which the widow, by her acceptance of the will, in a certain contingency, at the proper time, was bound to respect. The relation of landlord and tenant thereafter existed between them, and all remedies incident to that relation attached, and a proceeding in the orphans' court will not be sustained. In the absence of any agreement, the tenancy was from year to year, though it was competent for the parties by writing to provide for a term of years. *Springer's Appeal*, S. C. Pa., January 4, 1886, Atl. Rep.

21. WILL—*Condition—Public Policy*—The will provided that the legatee should have the income of the estate and such further sums as her wants might demand, so long as she remained the wife of I. A. Thayer; but if she was "left a widow, or for any cause should cease to be the wife of said" Thayer, the whole estate should be given to the legatee. *Held*, that the condition was valid, and not against public policy. *Thayer v. Spear*, S. C. Vt., Jan. 15, 1886.—Eastern Rep.

22. WILL—*Innocent Purchaser of Real Estate Charged With Payment of Legacy—Constructive Notice—Pleading—Parties*—The will charging the real estate in contention with the payment of certain legacies was recorded in the probate records. A deed of a portion, executed subsequently by the residuary legatees, who accepted the real estate thus incumbered, specifically describing their interest and referring to the probate records, was recorded in the town clerk's office. There were several *mesne* conveyances in which reference was made to previous deeds. The defendants purchased without actual notice. *Held*, that the law will impute notice to them; that they were put upon inquiry, and charged with such knowledge as they would or might have acquired by making inquiry; that the orators—those interested in the legacy thus charged—have an equitable lien on the entire estate; but that part undisposed of, if any, should be first applied in payment, and the defendants should pay the balance in order to redeem. One of the legatees, who refused to become an oratrix, cannot be joined as defendant. *Lovejoy v. Raymond*, S. C. Vt. Jan. 15, 1886—East. Rep.

QUERIES AND ANSWERS.*

[*Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.*]

QUERIES.

40. A. owns lot one, and gives a mortgage on same with power of sale to B.; then A. conveys same to her grandson C. in consideration of "love and affection." The *habendum* clause is as follows: "To have and to hold the said granted and bargained premises with all and singular, the rights, privileges, and advantages thereof to him, the said C. and his heirs forever, upon the following terms and conditions, nevertheless, that is to say, he is not to come in full possession of the land during the natural life of his father, and also the natural life of his mother, but is to reside with them at the home farm (lot one), and is to carry on the farm with his father to the best advantage of himself and the estate I leave behind me, taking as a compensation for his services and trouble, one-third of all the products of the farm, and also conditioned that immediately after the death of his father and mother he is to have, use, occupy and enjoy the premises, and all the rents and profits thereof during his natural life, with the reversion thereafter to the lawful heirs and legal representatives of said C., so that the said C. shall not have it in his power during his life-time, to bargain, sell, mortgage, or in anywise alien or encumber the said premises—and provided also that the said bargained and granted premises shall in no wise be subject to any debt, or debts, contracts or engagements whatever of the said C. now existing, or any that the said C. shall or may hereafter enter into—the true intent and meaning of this conveyance being that the

said tracts of land composing my home farm shall always remain an unincumbered home and possession for the said C. during his life-time,and to revert unincumbered to his heirs and legal representatives. C. took possession under said deed, and after the death of his father and mother and the grantor A., the mortgage given by A. to B. is foreclosed and C. buys the property, and by this means attempts to gain the fee simple title and cut out his children, or remainderman as named in the deed, from A. to him. C. then sells lot one to D. At death of C. his heirs bring suit in ejectment against D. for the property, claiming that their father, C., did not have the right to the fee. All deeds were properly recorded, and D. had constructive knowledge of same. Can the children of C. recover? M.

QUERIES ANSWERED.

Query 32. [22 C. L. J. 287.] On the trial of Hilands for murder, the jury were permitted to separate after being sworn, but before any evidence was given. The next morning the court expressed doubts as to the legality of the separation, and discharging the jury, ordered the impaneling of another. The defendant was tried and convicted, after a plea of former jeopardy had been entered. On error to the Supreme Court of Pennsylvania the plea was sustained, and the discharge of the defendant ordered. Since the decision of the Supreme Court, an information, charging the defendant with involuntary manslaughter, has been made. It is claimed that this crime, only being a misdemeanor, was not included in the indictment, and that defendant's discharge will not be a bar to the further prosecution. Can this after position be maintained? The decision in this case will be found in "Weekly Notes of Cases," of Jan. 7, (Phila). J. M. H.

Answer—By statute in Pennsylvania involuntary manslaughter is declared to be a misdemeanor. Brightley's Purdon's Digest of the Laws of Pennsylvania, § 146 of Crimes, p. 429. The general rule is, that an acquittal upon an indictment for a felony is no bar to an indictment for a misdemeanor, and *e converso*. 2 Hawk. c. 35, § 5, Wharton's Am. Crim. Law, 1st ed., 139. In accordance with this rule it has been held in Pennsylvania, that an acquittal for murder is no bar to an indictment for involuntary manslaughter. Com. v. Gable, 7 Serg. & Rawle, 423, Wharton, *supra*, 141. A. W. PULVER.

Chicago, Ills.

RECENT PUBLICATIONS.

PRINCIPLES of Contract at Law and in Equity, being a treatise on the general principles concerning the validity of agreements, with a special view to the comparison of law and equity. By Frederick Pollock, of Lincoln's Inn, Esq., Barrister-at-Law; *Corpus* Professor of Jurisprudence in the University of Oxford; Professor of Common Law in the Inns of Court; Late Fellow of Trinity College, Cambridge; and Honorary Doctor of Laws in the University of Edinburgh. (Second American from the Fourth English Edition.) With notes by Gustavus H. Wald, of the Cincinnati bar. Cincinnati: Robert Clarke & Co. 1885.

This is an American edition of a very able and learned English work on a very broad and important, we might almost say, all-important, subject. The law of contracts has, both in England and America, long employed the best talent of the profession, or, at least, that part of it which is engaged in legal literature, and this work is one of the best of its class. The learned English author has manifestly devoted a great deal of labor and research to the preparation of the work, and he has been ably seconded by the American editor. Between them they have brought the law of contracts well nigh down to date. The arrangement of the work is very good, and every part of it evinces careful and conscientious labor, unsparingly devoted to it, and the result is a volume of much value to the profession. The book is a large one (762 pages), and its typographical execution is very creditable to the publishers.

THE LAW CONCERNING FARMS, FARMERS, AND FARM LABORERS; together with the game laws of all the States. By Henry Austin, Esq., of the Boston bar. Boston. Charles C. Soule, Law Publisher. 1886.

This is a handsome volume of 250 pages, upon a branch of the law of great interest to the profession, especially in the rural districts. It is the only work of which we have any knowledge purporting to treat, as a specialty, of the law particularly affecting the great agricultural class, which is, in fact, the mass of our population. The relations of the agriculturist to other persons, to his laborer, if he is the employer of "help;" to his tenant if he occupies the position of landlord; to his landlord, if those positions are reversed; are all exhaustively treated, in this excellent compendium. The law relating to domestic animals is the subject of one chapter, and that of warranty of soundness of animals of another, and that of itself is a most valuable and important collection of law on a subject the litigation of which is incessant. Other topics of a rural nature are treated, the sale of crops and timber, the relations of landlord and tenant in respect to those subjects, liability for damages on account of fires caused by agricultural processes, the general principles of land title law, trespass, fixtures etc. All these subjects are matters of much interest and frequent litigation, and to a lawyer whose clients are chiefly agriculturists the work will be in the highest degree useful and valuable. There are other very important topics, private and public roads, the right of way, and especially the law relating to boundaries and fences. Water privileges, drainage, mills, and other like subjects, have received the attention of the learned author. The game laws of the several States have received full consideration. In short we repeat that the work is well worthy of the attention of the profession, and if ever a layman ought to buy a law-book, this book should be purchased by the farmer.

JETSAM AND FLOTSAM.

A distinguished judge of this State says there are three kinds of liars who testify in courts: "Liars, —— liars and experts." That is sound, even if profane.—*Albany Law Journal.*

JUDGES IN AN UNUSUAL ROLE.—Judges sometimes figure in their courts in an unusual role. The judge of the police court at Atlanta, Georgia, was recently bound over to answer in his own court the charge of fighting. A circuit judge in Missouri was not long ago indicted by a grand jury of his own court for drunkenness in office. The judge, who was upon the bench when the indictment was returned, pleaded with the grand jurors to reconsider the matter and ignore the indictment. But they were obdurate. The case having been continued, at a subsequent term the judge retired from the bench, called another judge to preside

temporarily in his place, and then the prosecuting attorney entered a *nol. pros.* Speeches were made by prominent members of the bar, after which the court resumed its usual course of business. The true inwardness of the case probably was that the grand jury happened to be composed of a number of extreme temperance reformers.—*Law Record.*

DE LUNATICO INQUIRENDO.—A strange story comes to us from Georgia through a daily newspaper. A lawyer who had lost his cause, was so impressed by the supernatural ignorance and stupidity (as he construed it), of the presiding judge, that he made the appropriate affidavit, and sought to procure an inquisition of lunacy upon that magistrate. The application was refused, however, and the judge, it is said, will return the compliment by issuing an attachment for contempt. There can be no doubt that the lawyer exceeded the privileges of his office. It is fully conceded that a defeated litigant has an undoubted right to "go down to the tavern and swear at the court," and the same privilege may be accorded to his zealous and disappointed counsel, but if the oaths are not simply profane, but judicial, and their object is not merely to free the mind and soothe the temper of the swearer, but to consign to the "fool-house" a magnate of the law, the affiant has manifestly passed beyond the line of toleration. If this sort of thing is permitted, and the lunatic asylum is to be accepted as the penalty of judicial error, it will be found as hard to man the bench, as it was in the days of martyrdom, for the early Christians to fill the office of bishop, the prelate being a shining mark for the persecutors, and the *nolo episcopari*, being the common formula used by the timid clergy, in declining the perilous honor.

SOMETHING ABOUT THE LEGAL PROFESSION IN CHILI.—The following is an extract from Clement Carpenter's lecture, and will be of interest as showing how affairs are conducted in that country.

"The legal profession is, to all appearances, next to the theological, the most favored; and about every fiftieth man in the country glories in the title of "Abogado." Of course only a respectable minority of these limbs of the law, actually engage in its practice; by far the larger number entering the profession as the end of a liberal education. It is perhaps needless to remark, that those who thus devote themselves to jurisprudence, merely for the sake of broader culture, belong to the wealthy aristocracy.

"As to the courts, they impress me as if well established and equipped for the administration of justice; and that too, independently of the assistance of the idle gaping crowd, such as is usually drawn to our judicial proceedings through no better impulse than curiosity. To the average American the portentous dignity and secresy of the Chillian judicial tribunals is a matter of annoyance and astonishment. It requires an immense amount of "red tape" and circumlocution to secure admission to the sacred portals of justice; but, once in, it is almost as difficult to get out again, as it was for the Polish spectators to escape from Judge Pike's court room during the late Polish riot trials. It must be confessed, however, that the universal decorum observed in the Chillian courts would, or at least ought to, put the Ohio bar to the blush. In Chili they seem to be able to transact legal proceedings without elevating their feet above their heads, and sighting the judge over the toes of their boots. The Chilian lawyers do not, when in the heat of argument, support themselves by grasping the furniture nearest within reach; nor by planting a foot upon a chair placed in front; and, strange to say, no matter what the temperature, the Chilian bar never appear in their shirt sleeves during the trial of causes. As tobacco chewing is not a national custom with them, spittoons form no part of the interior ornamentation of their court rooms. It is also possible for a Chilian lawyer to argue a law point, without taking a dray load of law books along with him. So complex in all their details are the regulations of their courts, that no umbrellas or canes are allowed in the court rooms, and while there no one would so forget himself, as to sit with crossed legs; but what would astonish a Yankee more than anything else in this connection, is the fact that in the law courts, as well as in all legislative and deliberate assemblies, the speakers, as a rule, remain seated, which peculiar custom gives such proceedings more of a conversational than oratorical air." — *Commercial Telegraph.*

PETTY LARCENY IN THE ROYAL COURTS.—"W. B." writes: "It cannot be too widely known that the Royal Courts of Justice are not at all safe places to frequent. Being subpœnaed as a witness in a case proceeding before Mr. Justice Manisty in the Queen's Bench Division Court No. 3, I attended Monday last. On either side, well forward in court, there is a nest of shelves, apparently for the reception of hats, &c. On one of these I placed my hat and greatcoat shortly before being called, and, to my surprise, on coming down from the witness-box, found my coat had been removed. I was not the only victim, another witness in the same case having lost his coat in a similar way; and on calling at Bowstreet to inform the police, I was told such practices were of frequent occurance. These facts speak for themselves, but it appears to me there is something very seriously wrong with arrangements which permit thieves to practice their calling before the very eyes and within a few yards of the judges in a palace of justice."—*London Law Times.*

ACCIDENT INSURANCE.—It appears to us that these Accident Insurance Companies are pursuing a very short-sighted policy. The other day, before Baron Pollock at Chester, a company resisted a claim for £500. The deceased in fun threatened to kiss a girl at an hotel; she was washing clothes in a tub; he in some way fell over the tub on to a pan and cut his hand. Inflammation set in and he died. *Held*, that the claim against the company could not be sustained, as notice had not been given within seven days of the accident, as required by the policy. To be quite safe, apparently, if you scratch your finger you should, in case subsequent inflammation sets in, send in a notice within seven days that you have scratched your finger.—*London Law Notes.*

JUDICIAL FANCY.—We took occasion some time since, to cull from the Georgia Reports some choice specimens of judicial "fine writing," which we laid before our readers for the double purpose of entertainment and warning. We have recently fallen upon the following, for which we are indebted to our poetical friend, Bleckley, J., of the same court. In Vickers v. Railroad, 64 G., 306, he gives us the following fanciful definitions of a non-suit and trial by jury: "A nonsuit is a process of legal mechanics. The case is chopped off, and only in a clear gross case is this mechanical treatment proper. Where there is any doubt, another method is to be used, * * * a method involving a sort of mental chemistry; and the chemists of the law are the jury. They are supposed to be able to examine every molecule of evidence, and to feel every shock and tremor of its probative force."—*Virginia Law Jour.*